

180206can'tstopH1 Hearing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 CAN'T STOP PRODUCTIONS, INC.,

4 Plaintiff,

5 v.

17 Civ. 6513 (CS)

6 SIXUVUS, LTD., et al.,

7 Defendants.

8 v.

9 KAREN WILLIS, doing business
10 as Harlem West Entertainment,

11 Intervenor.
-----x

United States Courthouse
White Plains, N.Y.
February 6, 2018
9:35 a.m.

14 Before:

15 THE HONORABLE CATHY SEIBEL,

16 District Judge

17 APPEARANCES

18 EISENBERG, TANCHUM & LEVY
Attorneys for Plaintiff
19 STEWART L. LEVY

20 ROBERT STEPHEN BESSER
Attorney for Plaintiff

21 ADELMAN, MATZ, P.C.
Attorneys for Defendants
22 GARY PHILIP ADELMAN
23 SARAH MICHAL MATZ

24 KAREN WILLIS, Pro Se Intervenor
25

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Hearing

1 (In open court)

2 THE COURT: Everyone can have a seat.

3 Since we were last here, I got an application from
4 Ms. Willis regarding jurisdiction, which I've denied, and I now
5 have a motion for reconsideration, which doesn't seem to say
6 anything different, whether the appeal is from the TRO or even
7 if it were from a preliminary injunction it doesn't divest me
8 from jurisdiction, so I'm not really following why we shouldn't
9 continue this hearing.

10 It did just make me wonder as a matter of curiosity
11 what, if anything, is going on in the circuit.

12 Have you briefed anything or argued anything?

13 MS. WILLIS: Your Honor, they referred it to the full
14 panel, so the full panel on the state panel, they're reviewing
15 it. I think the last I've heard is they might get around to it
16 not this week, but next week. There's sort of a backlog on
17 that.

18 THE COURT: Well, I'm going to press on.

19 I also have a motion to dismiss and then an amended
20 motion to dismiss. Essentially, Ms. Willis arguing that
21 Sixuvus is unlikely to prevail on its claims against Can't Stop
22 for failure to name -- to join the necessary party. That's
23 certainly something that anybody can raise as part of their
24 argument at the conclusion of this hearing as to why I
25 shouldn't enter the injunction. In other words, you can argue

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Hearing

1 that the failure to name a necessary party means that Sixuvus
2 is unlikely to succeed, and, therefore, I should not grant the
3 injunction, but we're not at the motion to dismiss stage.
4 Regardless of what happens with the injunction, I expect we'll
5 get there, and at that point, I'll consider it. And I'll
6 consider the likelihood of that argument carrying the day as
7 part of my decision whether to grant the injunction. But I
8 also don't see that it's any reason why we shouldn't press on
9 here.

10 And I was actually confused because I thought that
11 Ms. Willis was one of the most eager to get this TRO lifted if
12 it was going to be lifted. Frankly, at this stage, I don't
13 know why anybody would want to just not finish this.

14 Just give me one second.

15 MS. MATZ: If I may say a couple of things. We
16 obviously want the preliminary injunction hearing to continue
17 to move forward, but I did just want to ask a couple of
18 housekeeping questions.

19 When Mrs. Willis, her attorney filed an order to show
20 cause to intervene in this action, that was one of the things
21 that everyone had agreed would be stayed, the opposition and
22 the briefing on that motion would be stayed until after the
23 mediation. And I do think it would be prudent, given that
24 Mrs. Willis is objecting on the grounds of subject matter
25 jurisdiction and still asking to put in a complaint in this

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1 matter, if we could set a briefing schedule to move that
2 forward, because, as your Honor may recall, we had, at the very
3 least, objected on the grounds that we do not think she's an
4 intervenor as of right. We're happy to brief the issue of
5 whether she is a necessary party which is a related question in
6 the papers.

7 Should that be done as a separate brief that we turn
8 in or -- I just want to understand.

9 THE COURT: Well, they're not exactly opposite sides
10 of the same coin, whether she's entitled to intervene or
11 whether she's a necessary party.

12 The issue of whether Ms. Willis is a necessary party
13 could go to the likelihood of success; whether she's entitled
14 to intervene doesn't. So I don't think it has to be briefed on
15 the same schedule, but that's up to you, if you guys want to
16 kill yourselves.

17 MS. MATZ: I'm not saying that it does have to be
18 briefed on the schedule. I just would like clarity on what
19 motions we're responsible for responding to. There were
20 several things filed. There was no pre-motion conference
21 requested.

22 THE COURT: I basically just denied what's out there.

23 MS. MATZ: Okay.

24 THE COURT: And I don't think you have anything to
25 respond to right now. I think it's fine to -- we set a

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Whitefield - Cross - Besser

1 briefing schedule on the application to intervene, but as a
2 practical matter, it might make more sense to await my ruling
3 on the P.I., because, frankly, depending on what happens there,
4 then you might finally be able to agree on something, but I
5 don't care if you want to brief it sooner.

6 MS. MATZ: I'm fine with that. I just wanted to raise
7 it because it hadn't been raised before. And we had tried to
8 put them all on hold, so I just wanted to bring it up to make
9 sure you weren't expecting a response right now. I'm happy to
10 set a briefing schedule after this is over.

11 THE COURT: That's fine, and you haven't waived
12 anything as far as I'm concerned.

13 MS. MATZ: Thank you.

14 THE COURT: And we had Mr. Whitefield, if I remember.
15 You are still under oath.

16 THE WITNESS: Yes.

17 THE COURT: And you had finished your direct,
18 Ms. Matz, so now it is Mr. Besser's turn.

19 MR. BESSER: Yes, your Honor.

20 WILLIAM WHITEFIELD,

21 CROSS-EXAMINATION

22 BY MR. BESSER:

23 Q. Good morning, Mr. Whitefield.

24 A. Good morning.

25 Q. I will be handing you Plaintiff's Exhibit 33. Would you

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Whitefield - Cross - Besser

1 take a look at that please, sir.

2 A. Yes.

3 Q. Have you seen it before?

4 A. I don't think so, but I'd have to really examine it to see.

5 Q. Look at page 2, if you would.

6 A. Uh-huh.

7 Q. Is this a headshot of yours?

8 A. Yes.

9 Q. Do you know when was taken?

10 A. I would -- I don't know the exact date, no. It's probably
11 at least -- it's probably about eight or nine years old.

12 Q. Now, there's a stack of exhibits in front of you that are
13 clipped.

14 A. Uh-huh.

15 Q. Would you look at Exhibit 22. If you -- and go on down.

16 A. Yes. Okay.

17 Q. And I'd ask you to look in particular at the last page of
18 Exhibit 22. Is that your signature?

19 A. Yes.

20 Q. Did you sign this contract?

21 A. Yes.

22 Q. Did you read it before you signed it?

23 A. Um, yes.

24 Q. I believe you told us in testimony on Thursday that at
25 about the time of this contract, you became a regular member of

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1 the group; is that true?

2 A. Correct.

3 Q. And what was your position in the group?

4 A. I was the Construction Worker.

5 Q. And as you rehearsed and trained to become the Construction
6 Worker, were you shown -- strike that.

7 You were familiar -- excuse me -- withdraw it.

8 You were familiar with the performances of the Village
9 People for a number of years?

10 A. Yes.

11 Q. You had acted as a swing or a substitute, correct?

12 A. Yes.

13 Q. So when you were asked to become the Construction Worker,
14 did you rely on past performances to help you, that is, past
15 performances of the Village People to help you get ready?

16 A. Sure, for certain songs.

17 Q. And you knew what your obligations were as the Construction
18 Worker?

19 A. Sure. Yes.

20 Q. Nothing further, your Honor.

21 THE COURT: Ms. Willis.

22 CROSS-EXAMINATION

23 BY MS. WILLIS:

24 Q. Good morning, Mr. Whit-field? Whitefield?

25 A. Whitefield.

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Whitefield - Redirect

1 Q. Which one is it again? I'm sorry. Whitefield. Okay.

2 A. Whitefield.

3 Q. Okay. You are an employee, I'm not sure I'm understanding
4 that, of the Sixuvus; is that correct?

5 A. Well, technically, I consult. I have an LLC, and they pay
6 my LLC for my services, but, yes --

7 Q. Okay.

8 A. -- to be technical.

9 Q. So then exactly who do you report to?

10 A. I report to the board of Sixuvus.

11 Q. And so, quite naturally, are you authorized to make direct
12 contact yourself with Can't Stop, or is it only the Sixuvus?

13 MS. MATZ: Objection to form; compound.

14 THE COURT: The witness can answer if he understands.

15 A. I've never really had any need to, but I don't know that I
16 couldn't. I was never told that I couldn't.

17 Q. But normally, the business of Can't Stop is through the
18 Sixuvus, the board; isn't that correct?

19 A. Yes.

20 Q. Thank you.

21 THE COURT: Any redirect?

22 MS. MATZ: Yes, your Honor. Give me one moment.

23 REDIRECT EXAMINATION

24 BY MS. MATZ:

25 Q. Good morning.

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Whitefield - Redirect

1 A. Good morning.

2 Q. When Mr. Besser was asking you about relying on your past
3 performances when you became a permanent member of the group,
4 and you said you did rely on your past performances. You're
5 talking about the past performances of Sixuvus, right?

6 A. Yes.

7 Q. Not anything prior to your being a swing or substitute in
8 the group?

9 A. Correct.

10 Q. And when you said that your understanding of your
11 obligations as the Construction Worker, you understood your
12 obligations. Did you understand those from Sixuvus?

13 A. Yes.

14 Q. And the members of Sixuvus?

15 A. Yes.

16 Q. Not Can't Stop?

17 A. Correct.

18 MS. MATZ: Thank you, your Honor. No further
19 questions.

20 THE COURT: You may step down, --

21 THE WITNESS: Thank you.

22 THE COURT: -- Mr. Whitefield.

23 THE WITNESS: Just put these in the same order they
24 were in.

25 (Witness excused)

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Rose - Direct

1 THE COURT: Defendants may call their next witness.

2 MR. ADELMAN: He just went to the bathroom.

3 THE COURT: Okay.

4 (Pause)

5 MR. ADELMAN: We call Felipe Rose.

6 MR. ROSE: Sorry. Fighting a cold.

7 THE COURT: Remain standing. Raise your right hand.

8 (Witness sworn)

9 FELIPE ORTIZ ROSE,

10 called as a witness by the Defendants,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ADELMAN:

14 Q. Good morning, Mr. Rose.

15 A. Good morning.

16 Q. Are you familiar with Sixuvus, Ltd.?

17 A. Yes, I am.

18 Q. Are you currently a board member of Sixuvus?

19 A. I am.

20 Q. Okay. And how long have you been a board member of
21 Sixuvus?

22 A. Since 1987.

23 Q. Okay. Prior to becoming a board member of Sixuvus, are you
24 familiar with the plaintiff in this case, Can't Stop?

25 A. Yes.

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Rose - Direct

1 Q. And when did you first meet any of the members of Can't
2 Stop?

3 A. 1977.

4 Q. Okay. And who was it that you met?

5 A. I met Jacques Morali, Beauris Whitehead, Henri Belolo, and
6 Victor Willis.

7 Q. And where did you meet them?

8 A. I met Jacques Morali and Beauris Whitehead at a club where
9 I was performing and they wanted to speak to me about a music
10 project that they were working on with Victor Willis.

11 Q. Okay. And as part of the performance at this club, were
12 you wearing a costume?

13 A. I was wearing my tribal gear, yes.

14 Q. And that is, you are Native American?

15 A. My dad.

16 Q. Your dad. And that is actual, Native tribal gear?

17 A. Yes.

18 Q. It's not a costume, is it?

19 A. No.

20 THE COURT: What word did you call it? Your "Dan"?

21 THE WITNESS: My dad.

22 THE COURT: D-A-D?

23 THE WITNESS: D-A-D. My father, my father.

24 MR. ADELMAN: His father is the Native American.

25 A. My dad is Native and Spanish, and my mother is Puerto Rican

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Rose - Direct

1 and Italian, so I have a mixture there.

2 MR. ADELMAN: Okay.

3 Q. At some point, did you begin recording music for Can't
4 Stop?

5 A. Yes.

6 Q. Okay. And what -- what type of music were you recording?

7 A. It was the -- for the second album, "Macho Man."

8 Q. Okay. And at some point, did you enter into an agreement
9 with Can't Stop?

10 A. I did.

11 Q. Okay. What type of agreement did you enter into?

12 A. It was a contract for employment.

13 Q. Okay. And you were paid a salary, correct?

14 A. Yes.

15 Q. And what were your duties under the contract?

16 A. To be ready to go out on the road, to perform, promote the
17 new single, radio, television, on-the-road appearances.

18 Q. And then at some point, an album came out called "Macho
19 Man," correct?

20 A. Yes.

21 Q. And that -- the group which recorded that song had a name,
22 correct?

23 A. Yes.

24 Q. And what was that name?

25 A. Village People.

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Rose - Direct

1 Q. Okay. And at that point, who was in that group?

2 A. It was, let's see, Alex Briley, David Hodo, Randy Jones,
3 and the late Glenn M. Hughes, and Victor.

4 Q. At some point, did this group start touring?

5 A. Yes.

6 Q. All right. And who booked that tour -- those tours?

7 A. Can't Stop.

8 Q. Okay. And who paid for the travel on those tours?

9 A. Can't Stop.

10 Q. And who paid for your lodging on those tours?

11 A. Can't Stop.

12 Q. And who coordinated all the aspects of the tour?

13 A. Can't Stop.

14 Q. And you were paid under the contract as a salaried
15 employee, correct?

16 A. Yes, I was.

17 Q. At some point, did the group stop touring?

18 A. We stopped touring in mid-80s, 1985.

19 Q. And why did the group stop touring?

20 A. We were told by the, I believe it was either the office
21 manager of Russell Sedowski (ph) at the time of Can't Stop,
22 that they weren't going to be in need of the group to continue
23 as a group, and that they were closing down their operations in
24 New York.

25 Q. And at that point, did you work for Can't Stop any longer?

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Rose - Direct

1 A. No. I -- no.

2 Q. And what did you do in 1985 when you no longer worked for
3 Can't Stop?

4 A. I went off to auditions for television, movie parts.

5 Q. Okay. Before we move on from there, at some point prior to
6 1985 did the group perform on American Bandstand?

7 A. It was the initial performance -- oh, my goodness, I'm
8 trying to recall. We did perform to present the concept of the
9 group early on.

10 Q. And as of the date that you performed on American
11 Bandstand, was the traditional hand motions, YMCA, was that
12 known to anybody?

13 A. No.

14 Q. Who invented those hand signals, in a sense?

15 A. It was the dancers of American Bandstand. And it was done
16 as a tribute to the song - they loved it so much. And so Dick
17 Clark, I think prior to the taping, he would sit in with the
18 audience or the dancers, and he said we have a surprise for
19 you. And so they played the chorus of the song and the kids
20 jumped up.

21 Q. And started doing the --

22 A. And started doing the arm -- the hand signals.

23 Q. So, in essence, it was Dick Clark who choreographed the
24 YMCA?

25 A. Well, he didn't, but the dancers on his show.

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Rose - Direct

1 Q. The dancers. Okay. And -- thank you.

2 Let's turn to 1987. At some point, did someone
3 approach you to start performing again as the Village People?

4 A. One of the ex-members, Randy Jones.

5 Q. And can you tell us what happened? How did he approach
6 you?

7 A. He approached everyone. He invited us to a birthday party
8 first to see if during that period of not being together, how
9 we looked together and how did we react with each other. And
10 then shortly right after that, he called us all up to get back
11 together to see if we could perform.

12 Q. Okay. And who amongst the original members did he call?

13 A. David Hodo, the late Glenn M. Hughes, Ray --

14 Q. Ray Simpson?

15 A. Ray Simpson, himself, and me.

16 Q. And at that point, did you form Sixuvus?

17 A. Yes, we did.

18 Q. And why did you form Sixuvus?

19 THE COURT: Can I interrupt one second.

20 You named five: Hodo, Hughes, Simpson --

21 THE WITNESS: Jones.

22 THE COURT: Jones, and yourself.

23 THE WITNESS: Yes.

24 THE COURT: That's five.

25 THE WITNESS: And Alex Briley.

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Rose - Direct

1 THE COURT: Okay.

2 THE WITNESS: We always leave one out for, for some
3 reason.

4 BY MR. ADELMAN:

5 Q. He's only sitting right there.

6 A. I know.

7 THE COURT: You'll get some grief later for that.

8 THE WITNESS: You're telling me.

9 BY MR. ADELMAN:

10 Q. At that point, why did you form Sixuvus?

11 A. Randy explained to us that -- he told us that if we were
12 going to get together and seek out work with booking agents,
13 that we had to become a company, because you can't hire six
14 people and pay six people. So we form a corporation and they
15 would pay the corporation. Then we would draw salaries from
16 that.

17 Q. And at the time, you were a member as in an owner of
18 Sixuvus, correct?

19 A. Yes.

20 Q. And you had access, from that moment on, all the books and
21 records of Sixuvus, correct?

22 A. Certain.

23 Q. And you were involved in the decision-making of Sixuvus,
24 correct?

25 A. Yes. When it came to touring, logistics, calendar,

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Rose - Direct

1 vacations, pretty much the overall running a business.

2 Q. Okay. And in 1987 when you formed Sixuvus, did you make an
3 arrangement or an agreement with Can't Stop?

4 A. Well, yes, we did, to perform and use the name.

5 Q. And what was the arrangement? What were the deal terms?

6 A. I don't recall all of them. I know that it was an oral
7 agreement with a 5% commission on any money generated every
8 quarter of the calendar year from touring.

9 Q. Understood. For live performances?

10 A. Uh-huh.

11 Q. And what was the term or the length of this agreement, your
12 understanding?

13 A. For as long as we wanted to stay as Village People.

14 MR. BESSER: Objection; lack of foundation.

15 THE COURT: Sustained.

16 Lay a foundation.

17 BY MR. ADELMAN:

18 Q. Sir --

19 MR. ADELMAN: Your Honor, I asked him if he was
20 involved in the decision-making of Sixuvus.

21 THE COURT: But this was not a unilateral decision of
22 Sixuvus. This was --

23 MR. ADELMAN: Okay.

24 THE COURT: -- a deal with somebody else. So you can
25 ask him, was he involved in the discussions with Can't Stop,

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1 who he spoke to at Can't Stop, what that person said. And if
2 he got it from someone else within his group, then he needs to
3 say that.

4 MR. ADELMAN: Yes. Understood.

5 Q. Who did the direct negotiations with Can't Stop?

6 A. I believe it was Randy with them. And then, of course, he
7 basically informed us as to what the discussions were. I
8 wasn't part of that, so I don't recall all of what was --

9 Q. I understand, but were you part of the decision to accept
10 the Can't Stop deal?

11 A. Yes, I was.

12 Q. Did Randy Jones explain the terms of the deal to you?

13 A. Yes, he did.

14 Q. And what did he explain was the term or the length of the
15 deal?

16 A. He basically told us that we're going to be allowed to use
17 the name and that we would pay a commission and the -- for as
18 long as we wanted to stay as Village People, but we had no idea
19 how long that was going to be. We were just starting to
20 even -- the thought of working --

21 Q. And did you all vote or did you all discuss the deal with
22 Can't Stop amongst the Sixxvus members?

23 A. I believe so.

24 Q. Okay. And you all agreed to do it, correct?

25 A. Yes.

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1 MR. BESSER: I move to strike. It's based upon
2 hearsay of a person who is not here in court. Randy --

3 THE COURT: That's true, but so was Jonathan
4 Belolo's testimony, and neither side has presented the horse's
5 mouth on this subject for reasons that elude me. I let your
6 client testify as to what his understanding was, and I'm
7 letting these witnesses testify as to what their understanding
8 was. If it was one degree removed, if there was another
9 witness here who said somebody in the group told me what Randy
10 Jones said, and I think I didn't allow that, I said call the
11 person between you and Randy Jones.

12 But I've let both sides not rely on the firsthand
13 knowledge. It's only a P.I. hearing. So I'll allow it.
14 Obviously, it goes to the weight, but not to the admissibility.

15 MR. BESSER: Understood, your Honor.

16 MR. ADELMAN: Thank you, your Honor.

17 Q. Okay. How long has Sixuvus been performing live as Village
18 People?

19 A. Since we started the company, since 1987.

20 Q. So approximate -- a little over 30 years, correct?

21 A. Over 30, 38 to be exact.

22 Q. And has it been a successful 30 years?

23 A. Yes, it has been.

24 Q. And why do you think that is?

25 A. Well, when we first started, we started in little -- tiny

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1 little clubs and not making very much money, and we went from
2 one booking agent to another, just sort of climbing that ladder
3 of a better booking agent. They got us better shows, better
4 venues, and we actually were quite surprised at the fan base.
5 They woke up. They realized, oh, they're back. And it's been
6 a terrific ride and a privilege to have been doing what I love
7 and the guys love to do, so, it was a pretty successful.

8 Q. Okay. To your knowledge, what has been the interaction
9 between Sixxvus and Can't Stop over the last 30 years?

10 A. Not much. Interaction in as far as anything regarding
11 television for music rights, to be allowed to sing on TV, or
12 any commercials for music sync licensing, but outside of that,
13 not much.

14 Q. And over the last 30 years, have you built up relationships
15 with venues and vendors and other folks in the touring
16 industry?

17 A. Well, the relationship that we built, in my case 40 years,
18 a fan base, television and radio people, independent
19 contractors, promoters, music vendors, and just the people that
20 we've worked with, all the booking agents from, like, the very
21 first ones all the way to the ones now we've had, William
22 Morris, we -- that's been a terrific relationship and a loyal
23 relationship that we've had.

24 Q. How many shows a year approximately do you perform now?

25 A. I'm going to say 50. Some years it was a little over 50,

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1 but I'm going to say 50.

2 Q. Okay. And do you feel over the last 30 years you've -- the
3 Sixuvus Village People have built up a reputation?

4 A. Yes, a reputation of representing the music to the great
5 music that was written and produced by the producers and Victor
6 Willis and the presentation, and how we carried ourselves with
7 a certain decorum to really show people that on stage, it's one
8 thing, but offstage, that's really where the test is, is how
9 you relate to your public and to your fans. And so, it was
10 just an overall great experience.

11 Q. Okay. Does Sixuvus have a Facebook page for Village
12 People?

13 A. I believe it does.

14 Q. Okay. Have you seen it?

15 A. No, because I don't like to look at anything as of late on
16 social media.

17 Q. Now, switching topics for a second. A few years ago around
18 2013, Can't Stop offered you and some of the other members of
19 Sixuvus a merchandising deal, is that correct?

20 A. Yes.

21 Q. Do you recall what it was for?

22 A. It was a program, sort of a merchandising program to revamp
23 the image of the group on a merchandising scale.

24 Q. And you agreed that they would be able to use your image,
25 correct?

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1 A. Yes.

2 Q. Okay. Now, if you had thought that Can't Stop could
3 terminate the license for you to be able to tour as Village
4 People, would you have signed that merchandising agreement?

5 A. Absolutely not. I would have never have done that.

6 MR. BESSER: Objection.

7 THE COURT: I'll allow it.

8 MR. BESSER: Not the facts.

9 MR. ADELMAN: Thank you, your Honor.

10 BY MR. ADELMAN:

11 Q. Thank you very much. It's a pleasure speaking with you.

12 MR. ADELMAN: Your Honor.

13 THE COURT: Mr. Besser.

14 CROSS-EXAMINATION

15 BY MR. BESSER:

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. You just testified that you had signed a merchandising
19 agreement?

20 A. I did.

21 MS. MATZ: It's already in as KK.

22 MR. BESSER: You put it in as KK. I apologize.

23 MS. MATZ: Clarity of the record.

24 MR. BESSER: Thank you for clarifying.

25 Q. Do you have Exhibit KK in front of you which would be in a

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1 stack, not in a clipped stack, which are plaintiff's exhibits?

2 It would be one over here.

3 A. Oh, okay. I don't see it. Either it's not in order --

4 THE COURT: If you have it marked as 32, why don't you
5 just give it to the witness.

6 BY MR. BESSER:

7 Q. Do you have Exhibit 32 still in front of you? The one I
8 just handed up?

9 THE COURT: Do you have something that says
10 Plaintiff's Exhibit 32 that Mr. Besser just gave you, not in
11 the stack?

12 THE WITNESS: No. He just took something away. I
13 didn't -- I wasn't looking. I don't see it here. L --

14 THE COURT: You know what? I'll try to find mine.

15 MR. BESSER: I have it here.

16 THE COURT: I'll try to find my KK and I'll give it to
17 you.

18 THE WITNESS: Even with glasses on, I can't see.

19 MR. BESSER: We have a copy.

20 THE COURT: Good.

21 THE WITNESS: This is not in order. Thank you.

22 BY MR. BESSER:

23 Q. Sir, would you please look at Exhibit 32.

24 A. Yes.

25 Q. And that is the merchandising contract you signed for your

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Ortiz - Cross - Besser

1 image?

2 A. Yes.

3 Q. And you understand in there that you confirmed that Can't
4 Stop controls the trademark?

5 A. Yes.

6 MR. ADELMAN: Objection to form.

7 THE COURT: Overruled.

8 Q. And when you signed this contract in 2013, was there any
9 question in your mind but that the trademark to the Village
10 People was owned by Can't Stop?

11 A. Repeat the question.

12 Q. I'm establishing the date when you signed this contract,
13 correct?

14 A. Yes.

15 Q. Was there any question in your mind at that time that Can't
16 Stop did not own the trademark to Village People?

17 MR. ADELMAN: Objection; calls for a legal conclusion.

18 THE COURT: Overruled.

19 At the time you signed this, which looks like it was
20 July 1, 2013, what was your understanding about the ownership
21 of the trademark Village People?

22 THE WITNESS: Everything that it's saying right in the
23 first couple of paragraphs, that only -- "the rights of the
24 trademark associated with performing and recording group as" --
25 and, basically, Jonathan, through his letters, told Mitch Weiss

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Ortiz - Cross - Besser

1 what the program was about, the merchandising program. So all
2 of that was laid out first.

3 Q. Now I'd like to refer you back to the time when you told us
4 that Sixuvus first was formed in 1987. Do you recall an entity
5 by the name of Fischhoff Productions?

6 A. David Fischhoff.

7 Q. And what is it that you recall about David Fischhoff?

8 A. We went to him to -- actually, Randy went to him about
9 booking us, managing us.

10 Q. Do you know whether or not Mr. Fischhoff approached Can't
11 Stop about the use of the trademark Village People for
12 performances?

13 A. I can't recall.

14 Q. Were you aware of any of the negotiations that went on
15 between Mr. Fischhoff and Can't Stop?

16 A. No.

17 Q. Isn't it a fact, sir, that as part of those negotiations
18 that, ultimately, Fischhoff Productions acquired a contract from
19 Can't Stop to produce the Village People for live performances?

20 A. I found that out after the fact, after those negotiations
21 took place. I wasn't the one dealing with that; Randy was with
22 David Fischhoff and Can't Stop.

23 Q. So there was originally a contract between Fischhoff
24 Productions and Can't Stop under which Fischhoff Productions
25 received the license to do performances of the Village People,

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Ortiz - Cross - Besser

1 isn't that true?

2 A. I believe it is; yes.

3 Q. And then after a year or two, and I'm talking from 1987
4 maybe '88, '89, problems occurred, didn't it?

5 A. I believe so.

6 Q. So Fischoff Productions no longer kept the contract, did
7 they?

8 A. But we were not happy with -- we were disillusioned with
9 the lack of enthusiasm they showed. So they acquired the
10 rights for the name of the group, but they really showed no
11 interest in us, and so, therefore, we then want -- didn't want
12 to be part of David Fischoff. In fact, we asked to leave.

13 Q. And one of the members of Fischoff Productions left
14 Fischoff to manage you, didn't he?

15 A. No. Not anyone.

16 Q. No one from Fischoff became involved with you at that
17 point?

18 A. I can't recall if there is a -- working for Sixuvus Ltd.,
19 you mean?

20 Q. Working with Sixuvus Ltd., yes?

21 A. No, not with David Fischoff.

22 Q. And then, sir, isn't it a fact that you then approached
23 Mr. Belolo and asked that the contract, that the Fischoff
24 Productions contract be assigned to Sixuvus?

25 A. Yes.

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Ortiz - Cross - Besser

1 Q. And was it assigned to Sixuvus?

2 A. In an oral discussion. Not in paper.

3 Q. And after you asked Mr. Belolo to have it assigned to
4 Sixuvus, it was Mitch Weiss that followed up with the
5 negotiations, wasn't it?

6 A. Well, we hired him to assist us with all of the everyday
7 laundry list of things to do having to do with business travel,
8 trademark, everything.

9 Q. When did you hire Mr. Weiss?

10 A. I can't recall the date. I know that he -- probably it was
11 shortly after we got together -- back together. Then he left
12 and then he came back, so I can't recall the dates.

13 Q. Well, he was there in 1990, wasn't he?

14 A. Yes, I believe so.

15 Q. And were you aware that Mr. -- strike that. When you --
16 I'll withdraw the question.

17 When you approached Mr. Belolo, Mr. Belolo responded
18 to you that you should get in touch with their attorney in New
19 York, Mr. Kopitko, didn't he?

20 A. Yes.

21 Q. And it was Mr. Weiss who followed up with Mr. Kopitko to
22 attempt to negotiate the agreement; is that correct?

23 A. On your behalf, yes.

24 Q. Were you aware of the terms that Mr. Weiss was proposing to
25 Mr. Kopitko?

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Ortiz - Cross - Besser

1 A. No. Only what was relayed to us.

2 Q. Were you aware that Mr. Weiss -- Mr. Mitch Weiss was
3 negotiating with him so that the initial term would either be a
4 year or 18 months?

5 A. I can't recall that.

6 Q. And that there was discussion of a possible option after
7 that?

8 A. I can't recall that, either.

9 Q. So when you testified that it was your understanding that
10 this contract would go on forever, or for as long as you wanted
11 it to go, I guess, you were unaware of any of these
12 negotiations that Mr. Weiss carried on?

13 A. Mr. Weiss -- Mr. Weiss basically reported to us what
14 discussions he had with Kopitko, but there was so much going on
15 then, I can't recall that.

16 Q. But Mr. Weiss was authorized by Sixuvus to have those
17 discussions with Mr. Kopitko?

18 A. I believe so; yes.

19 Q. You discussed in your testimony the beginnings of the YMCA
20 hand signals; do you recall that?

21 A. Uh-huh.

22 Q. Those are still the same YMCA hand signals that are used at
23 concerts, aren't they?

24 A. Of course, yes.

25 Q. So the group itself carried that on from 1977 up until the

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Ortiz - Cross - Besser

1 last performance of Sixuvus?

2 A. As a tribute to American Bandstand and to acknowledge what
3 they presented that -- yes.

4 Q. How much has your role as the Native American changed since
5 1977?

6 A. It evolves through the years. Weight fluctuates. I change
7 things. Everything I've -- I wear, I design with either
8 designers, or my father helps me with different vests and all
9 my jewelry he makes for me, my breastplates, things like that.

10 Q. But the performance, in essence, continues to encompass a
11 Native American, which is you or sometimes your substitute,
12 throughout from 1977, correct?

13 A. Yes. Yes.

14 Q. Can you recall Mr. Belolo being at any shows?

15 A. In Europe, he would pop in to a show. Yeah, in Paris.

16 Q. So he saw shows over the period of time?

17 A. Or a television show and he would show up.

18 Q. Do you believe that Mr. Belolo was aware of how the group
19 was performing?

20 A. Yes.

21 Q. And do you believe Mr. Belolo approved of how the group was
22 performing?

23 A. Absolutely.

24 Q. Were you part of the, what's been described in this court
25 as the international tour that took place in 1979?

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Ortiz - Cross - Besser

1 A. Since the very beginning I've been involved.

2 Q. And I believe you told us in your testimony this morning
3 that -- how did you put it? That the purpose of the group
4 throughout the years has been to represent the great music?

5 A. The music, the entire concept.

6 Q. And the entire concept is what in your mind?

7 A. Is the characters of the group, the music, the show, the
8 live show, just everything that made this group very different
9 apart from many other groups.

10 Q. It was intended to be fun disco; isn't that true?

11 A. Yes.

12 Q. Along with the great music?

13 And when you refer to great music, you're talking
14 about the Village People's songs?

15 A. Absolutely. Yeah.

16 Q. Has the group, to your knowledge, ever done anything that
17 would disrespect the music, that is, the Village People music?

18 A. I don't understand that question, "disrespect."

19 Q. Well, has the group ever done anything to play down the
20 effect of the Village People music?

21 A. No. Never.

22 Q. It's there to hold it up, isn't it?

23 A. I beg your pardon?

24 Q. It's there to hold it up and support it?

25 A. The music is pretty much -- it speaks for itself. You

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1 don't need to change it. You -- it is what it is. Great songs
2 written by Jacques Morali, Victor Willis. You know, you
3 can't -- it stands on its own. And you have to deliver -- the
4 public cannot be deceived by disrespecting any kind of music
5 like that.

6 Q. And the formation of the group was largely an end to the
7 artistic direction of Jack Belolo and Morali?

8 A. Yes.

9 Q. And that same artistic direction, that same arttic impact
10 was carried through all these years by Sixuvus?

11 A. Since I've been there from the beginning.

12 MR. BESSER: Nothing further, your Honor.

13 THE COURT: Ms. Willis.

14 CROSS-EXAMINATION

15 BY MS. WILLIS:

16 Q. Hello, Felipe.

17 A. How are you?

18 Q. Good. Can I call him Felipe? We like each other, so I'm
19 going to call you Felipe, okay?

20 A. Sure. Why not?

21 Q. David Fischhoff, isn't it true that he was the first, I
22 guess, company to have the agreement with Can't Stop?

23 A. Uh-huh.

24 THE COURT: You have to say "yes" or "no."

25 A. Yes, yes.

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Ortiz - Cross - Willis

1 Q. In fact, isn't it true that in 1987 to, I think I saw the
2 things from 1989, I believe it was when Fischhoff left, isn't it
3 true that the Sixuvus did not have an agreement with Can't Stop
4 at that time directly?

5 MR. ADELMAN: Objection to form.

6 THE COURT: Overruled.

7 A. Oh, I'm sorry.

8 Q. You can answer.

9 THE COURT: That means you can answer.

10 The question was, in the period '87 to '89, is it
11 correct that Sixuvus did not have an agreement directly with
12 Can't Stop.

13 A. No, we did not.

14 Q. It was David Fischhoff?

15 A. They did. Yeah.

16 Q. Okay. Great. And so that agreement with Mr. Fischhoff was
17 a written one, wasn't it?

18 A. I believe so. I never saw it.

19 Q. Okay. Is it your testimony here today that Can't Stop has
20 not really exercised any considerable control over the Sixuvus,
21 you know, in the last 30 years?

22 A. No. You know, they loved what we were doing. Henri
23 loved -- whenever we would get together, even at his house for
24 dinner, he expressed, oh, I heard that the show in whatever
25 country was terrific. I mean, he was overall happy.

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Ortiz - Cross - Willis

1 Q. And he was sort of hands-on, right, wasn't he?

2 A. Well, with schedules and knowing where we were going, but
3 hands-on as to our shows or anything like that, no.

4 Q. So let's talk about the Hollywood Star.

5 A. Star.

6 Q. Walk of Fame.

7 A. The Star.

8 Q. Did Henri approve of that?

9 A. I believe he did because I was recovering from an injury so
10 I wasn't part of all of the discussions, but Mitch Weiss had
11 reached out to Henri. He was going to be there. I believe
12 Victor and Randy were going to be there. Everyone was going to
13 be there. And my first plane trip back going to California
14 from -- after my injury was to the Star on the Hollywood Walk
15 of Fame.

16 Q. So he was even involved in that, in some sense, in that he
17 showed an interest?

18 A. He showed an interest, and he was actually very excited and
19 happy to see that the group was receiving this huge honor in
20 the industry.

21 Q. And you know, with the Internet now, right, lots of videos
22 online, we're, sort of, in the information age. You don't have
23 to appear now --

24 A. No.

25 Q. -- backstage to see an artist, to check up on them; isn't

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1 that true?

2 A. Sure. I believe so. You know that and I know that.

3 Q. What do you do? You can turn on YouTube, is that correct,
4 and see -- isn't it true?

5 MR. ADELMAN: Objection.

6 Q. I'll rephrase that. Isn't it true that there are perhaps
7 hundreds, I don't know the number, of performances of the
8 Sixuvus Village People on YouTube and other things?

9 A. Yes, by fans.

10 Q. So in this day, in this age, you don't have to show up.
11 You can just take a look at the videos and see what's happening
12 with the Sixuvus; isn't that correct?

13 A. Yes.

14 Q. So, if I wanted to know whether or not -- let's say I say I
15 want to know if Felipe is wearing his long tribal headwear,
16 right --

17 A. The gear.

18 Q. -- and if I knew you were performing at the, I don't know,
19 at the Greek theater, right, and I knew what particular day you
20 were performing, isn't it true that if that performance is on
21 YouTube, I only need to see that to see exactly what you were
22 doing at that performance?

23 A. After it happened.

24 Q. So when would you then agree that Can't Stop need only look
25 at some YouTube videos to see what's happening with the

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Ortiz - Cross - Willis

1 Sixuvus?

2 MR. ADELMAN: Objection. This -- all of this is
3 argument.

4 THE COURT: Yes. Sustained.

5 You can certainly make the argument, Ms. Willis, and I
6 get your point which is nowadays, one doesn't have to show up
7 at a concert, one can see it on YouTube or pieces of it.

8 MS. WILLIS: Uh-huh.

9 Q. So you agree with that?

10 MR. ADELMAN: Objection.

11 THE COURT: It doesn't matter if the witness agrees.
12 It's an argument.

13 Q. So I've reviewed a lot of communications. As you know, we
14 obtained discovery during the Sixuvus trial with Victor.
15 Remember that? Do you recall that?

16 A. Yes.

17 Q. And as you know, there was a lot of discovery back and
18 forth. And I've reviewed a considerable -- as a matter of
19 fact, I have it all -- a whole lot of conversations with you
20 and Henri.

21 So I wanted to ask you, do you recall any
22 conversations with Henri or Can't Stop, you know, that dealt
23 with issues of controlling you in that you wanted to do certain
24 things and they didn't want you to do it?

25 A. No. I don't recall that at all.

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Ortiz - Cross - Willis

1 Q. So you -- is it your testimony that Can't Stop never
2 refused anything that you wanted to do?

3 A. I think that Henri was very happy with me up until -- well,
4 Can't Stop -- until May of last year. But for the most part,
5 even in San Diego when Jonathan was present with me and Deborah
6 Crawford at lunch and dinner, he expressed his utmost
7 gratitude.

8 Q. Well, isn't it true that Can't Stop refused over and over
9 again your request to move from verbal to written agreement?

10 A. He did, I believe so, but I don't -- I never asked why.

11 Q. He was -- I guess he controlled that, would you say?

12 A. I believe so; yes.

13 Q. So there -- you know, there were at least some --

14 A. Yeah.

15 Q. -- instances of -- that Can't Stop did, in fact, control.

16 A. Yeah, but not in performance. We were free to perform and
17 elevate the group as much as possible.

18 Q. But wouldn't you agree if you want him to go into a written
19 agreement, that deals with your performances; isn't that
20 correct?

21 MR. ADELMAN: Objection to form. I'm not even sure
22 what this question --

23 THE COURT: What I'm understanding the witness to be
24 saying is that Henri did not tell them how to execute the live
25 performance, but he did decline to enter into a written

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Ortiz - Cross - Willis

1 license.

2 Q. And are you aware that Can't Stop from time to time denied
3 the Sixxvus an opportunity to perform live, for example, on
4 television?

5 A. I can recall maybe once or twice for reasons that had to do
6 with licensing and sync and things like that.

7 Q. Could you tell me about those instances so that we can
8 understand them so more.

9 A. I can't recall all of the details. I know that it was for
10 one commercial which was "Let Go." I can't recall the other,
11 but --

12 Q. Do you recall the PBS performance on the disco show, some
13 sort of a PBS disco show?

14 A. I do, but that was so long ago that it's in fragments in my
15 memory.

16 Q. But isn't it true that you were to do a live performance
17 for that television show?

18 A. I found out afterwards that we weren't going to do it.

19 Q. Right, but you were to do that, though?

20 A. No. I didn't even know we were going to do it. It was,
21 like, it went to them, and then we found out, oh, we're not
22 doing it, but I heard we were going to.

23 Q. But Can't Stop prevented that; isn't that correct?

24 A. I suppose. I mean, I didn't have a lot of discussions or
25 interaction with Can't Stop. Whenever they wanted to deny

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Ortiz - Redirect

1 anything, it was not up to me to question them as to why -- I
2 felt that they knew what they were doing, and so if it was good
3 for them, it was good for me.

4 Q. But it was a live performance, though, for television?

5 A. The television show was a live -- but, again, I only found
6 out about it after the fact that we were going to perform.

7 Q. But Can't Stop stopped it; is that correct? Can't Stop
8 prevented that performance?

9 A. I don't know. I heard through K.C. of the Sunshine Band
10 that we were supposed to be on it. That's how I found out.

11 Q. Thank you, Felipe.

12 A. Thank you.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. ADELMAN:

16 Q. Mr. Rose, this Fischhoff agreement that plaintiff is
17 referring to, did you ever see it?

18 A. I never saw it, no.

19 Q. Earlier, Ms. Willis asked if Henri approved of a Star on
20 the Walk of Fame. Why would Henri have to approve an honor
21 given to the Village People?

22 A. He didn't approve; we let him know that we were being
23 honored. It was a presentation pitched by Kirk Weber and
24 Deborah Crawford and they submitted the application. And in
25 reviewing so, the chamber of commerce in Los Angeles, they gave

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1 us the nomination.

2 Q. Okay. And you just mentioned the "Let Go" commercial. You
3 did actually do the "Let Go" commercial, it was on TV; correct?

4 A. Yes.

5 Q. However, it was without the Village People music, correct?

6 A. Yes.

7 Q. So your understanding is that it was without the Village
8 People music because Victor Willis refused to license his share
9 of the music?

10 A. Yes.

11 MR. ADELMAN: Thank you.

12 THE COURT: You may step down, Mr. Rose.

13 THE WITNESS: Thank you.

14 (Witness excused)

15 MR. ADELMAN: Before we call our next witness, a
16 housekeeping request.

17 THE COURT: Okay.

18 MR. ADELMAN: In our last session or, I'm sorry, on
19 Tuesday -- I believe Wednesday's session, plaintiff submitted
20 three printouts from the Internet that were pages relating to
21 the three trademarks at issue in this case.

22 There are other items within the trademark office that
23 refer to that file that we would like to use in our
24 post-arguments. I'm wondering if it's just easier if we submit
25 them then with our arguments, because it is part of an entire

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1 file with TTAB. For example, the whole thing would be lengthy.
2 We just have little snippets of what we'd like to use. If we,
3 as a housekeeping measure, can just agree that we can use
4 anything from the registration filed with the TTAB of the three
5 trademarks, is my proposal.

6 THE COURT: That's fine with me, but I think in
7 fairness before -- I don't want to have the plaintiff say, oh,
8 we need to now submit supplemental arguments because now we
9 know what portions of the file you're using. So that's fine,
10 but just before the record closes here, tell the other parties
11 what portions of the file you're going to be offering so they
12 can take them into account.

13 I don't want to make you take the time to do it now,
14 but I think it should be part of the record at the hearing so
15 that everybody is aware of what you're going to be relying on.

16 MR. ADELMAN: I can tell you right now. It's the top
17 pages -- it's hard to describe this. When you do a search on
18 USPTO, there's a top page which gives all the information on
19 the registration, the filing, the first-use date. It's
20 basically a summary of all the aspects of the file.

21 We want to use those pages and we want to use the
22 specimens attached to the original filing of all the trademarks
23 and for all of the supplemental filings for each of the
24 trademarks when they verified the trademarks found at the
25 8-year and 15-year marks.

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Hearing

1 THE COURT: Well, you guys know what you're talking
2 about. If that's good enough for the other parties to
3 understand specifically what you're talking about, great. If
4 it's not, they will tell you, and you will have to give them
5 more details.

6 MR. ADELMAN: I can provide the actual -- if you want
7 the printouts, I can provide the actual printouts by tomorrow.

8 MR. BESSER: That's what I was going to --

9 THE COURT: Is it going to be a stack a foot high?

10 MR. ADELMAN: No, I don't think so. I think it will
11 probably be within 30 to 40 pages.

12 THE COURT: That's probably best. Then mark it as an
13 exhibit and it will be a part of a record.

14 MR. ADELMAN: I'm not going to be here tomorrow.

15 THE COURT: I would be thrilled not to be here
16 tomorrow. In that event, you can just send electronic copies
17 to me and to your adversaries.

18 MR. ADELMAN: That's what I was asking. Thank you.

19 THE COURT: All right. Who is next?

20 MS. MATZ: Your Honor, we call Leslie Simpson to the
21 stand.

22 THE DEPUTY CLERK: Watch the bags, come around
23 carefully, the bags, wires. Come around this way.

24 MS. MATZ: May I approach.

25 THE COURT: After the oath.

180206cantstopH L. Simpson - Direct

1 MS. MATZ: Okay.

2 THE DEPUTY CLERK: Raise your right hand.

3 (Witness sworn)

4 MS. MATZ: May I approach.

5 THE COURT: Yes.

6 MS. MATZ: If I may. Before I begin with
7 Mrs. Simpson, I just wanted to go over one other housekeeping
8 item. I just handed up -- if you recall, last week we had
9 submitted some Internet evidence that was printed in vertical
10 format that was a little difficult to read.

11 THE COURT: Yes.

12 MS. MATZ: We have just reprinted those exact same
13 screen shots in horizontal format so they are larger on the
14 actual page. These were already admitted into evidence the
15 vertical way, but we were providing replacement copies so they
16 were a little easier for everyone to read.

17 THE COURT: So we'll substitute G, H, L, M, O, Q, R,
18 LL, NN, PP, and QQ for the old versions.

19 MS. MATZ: Thank you very much.

20 LESLIE SIMPSON,

21 called as a witness by the Defendants,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MATZ:

25 Q. Good morning, Mrs. Simpson. How are you today?

180206cantstopH L. Simpson - Direct

1 A. Good morning.

2 Q. What's your current profession?

3 A. I have two professions. I work with the Village People --
4 with Sixuvus. I've been working Sixuvus for quite some time.
5 And I'm also a realtor.

6 Q. And what's your original relationship to Sixuvus?

7 A. I am married to Raymond Simpson.

8 Q. And when did you meet him?

9 A. 1979.

10 Q. And when did the two of you get married?

11 A. 1987.

12 Q. Okay. And --

13 THE COURT: You're a patient woman. You're patient.

14 (Laughter)

15 BY MS. MATZ:

16 Q. You mentioned that part of what you do is working with
17 Sixuvus; is that correct?

18 A. That is correct.

19 Q. And that's the company, Sixuvus Ltd.?

20 A. Sixuvus.

21 Q. Can you tell me in what capacity and when you have worked
22 with Sixuvus, what your role's been?

23 A. Well, in the beginning, I was Mitch Weiss' assistant. I
24 started in 2009, and I've been working with them until the
25 present.

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L. Simpson - Direct

1 Q. Okay. And how long were you Mitch Weiss' assistant
2 specifically?

3 A. Three years.

4 Q. So 'til approximately 2012?

5 A. Yes, because I was -- I had to work outside the office for
6 a year, so I was -- someone else took my place. And then Mitch
7 left and I came back.

8 Q. And what do you currently do for Sixuvus Ltd., what
9 kinds --

10 A. I wear many hats with Sixuvus. I'm their bookkeeper. I
11 run the Facebook page. I do a lot. Let me think. I attend
12 meetings with booking agents, accountants. I did more when I
13 was in the office then when I've been out of the office.

14 Q. And when you were in the office, is that when you were
15 Mr. Weiss' assistant?

16 A. Yes.

17 Q. And so when you were his assistant, did you interact with
18 him on a daily basis?

19 A. Yes, I did.

20 Q. And were you -- did you have any -- withdrawn.

21 In your interactions with him or as part of your
22 duties, did you regularly see his incoming and outgoing
23 e-mails?

24 A. Yes. I had to look at them every day.

25 Q. Okay. And why would you look at them every day?

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L. Simpson - Direct

1 A. Well, because he wanted me to go through them and he
2 wanted -- he didn't want to build them up, so he wanted me to
3 eliminate the ones that weren't necessary.

4 Q. Okay. During the time when you were working as Mr. Weiss'
5 personal assistant, were you aware of whether or not he
6 regularly corresponded with representatives of Can't Stop?

7 A. He didn't -- he didn't regularly correspond --

8 MR. BESSER: I couldn't hear. There was a cough.

9 A. I was aware of what Mitch was doing, and he was not
10 regularly corresponding with Can't Stop, not on a regular basis
11 at all.

12 Q. Do you recall any instances where he did correspond with
13 them?

14 A. Yes.

15 Q. And could you tell me the reason for that interaction or
16 what it was about?

17 A. I noticed when we were in court with Mr. Besser and
18 Mr. Levy, he did correspond with Henri every so often about the
19 court case.

20 Q. And when you refer to the court case, are you talking about
21 the lawsuit in San Diego?

22 A. Yes.

23 Q. Were you aware of whether or not -- or did -- withdrawn.

24 Did Mr. Weiss regularly send Can't Stop set lists?

25 A. No.

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L. Simpson - Direct

1 Q. Did he do that at any time you can recall?

2 A. No.

3 Q. What about upcoming performance schedules? Do you know if
4 he sent those?

5 A. No.

6 Q. Were you aware of him corresponding with Can't Stop about
7 him needing approvals for any of the live performances for
8 Sixuvus?

9 A. No.

10 Q. Did you -- when you were his assistant, did you also -- was
11 it part of your duties to answer the phone?

12 A. Yes.

13 Q. And that's the phone for the Sixuvus Ltd. office; is that
14 right?

15 A. Yes, it is.

16 Q. And did you answer pretty much all the calls that would
17 come in?

18 A. Unless I was at lunch.

19 Q. Did representatives of Can't Stop regularly call the office
20 to speak with Mr. Weiss?

21 A. No.

22 Q. Can you recall any instances where they did?

23 A. I've never spoken to anyone from Can't Stop.

24 Q. So you've never spoken to either Mr. Henri Belolo or
25 Jonathan Belolo?

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L. Simpson - Direct

1 A. I've never spoken nor seen Henri Belolo. I've never spoken
2 to Jonathan, and I've just met him recently.

3 Q. As related to this lawsuit?

4 A. Yes.

5 Q. What do you currently do -- withdrawn. You answered that
6 question.

7 Do you work closely with Ms. Crawford?

8 A. Yes.

9 Q. And do the two of you -- what do the two of you interact --
10 what does she do and what do you do? How do you interact?

11 A. She manages the Sixuvus office, and we work on projects
12 together.

13 Q. Okay. And do you know whether or not she regularly sends
14 set lists to Can't Stop?

15 A. I'm very aware that she does not send anything to Can't
16 Stop.

17 Q. And what about upcoming performance schedules?

18 A. No.

19 Q. Do you know who Robert Bell is?

20 A. Yes.

21 Q. Can you tell me who that is?

22 A. Robert Bell is Kool of Kool & The Gang.

23 Q. Is that a musical group?

24 A. Yes, it is.

25 Q. Are you personally acquainted with Mr. Bell?

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L. Simpson - Direct

1 A. Yes, I am.

2 Q. What about his wife?

3 A. I know her well.

4 Q. Okay. How long have you known them?

5 A. Oh, God, I would think by now about 35 years.

6 Q. Has Sixuvus ever performed in the past with Kool -- I'm
7 sorry, did you say it was Kool & The Gang or Kool & Gang?

8 A. Kool & The Gang.

9 Q. Has Sixuvus ever performed in the past with Kool & The
10 Gang?

11 A. Countless times.

12 Q. Did you recently see Mr. and Mrs. Bell?

13 A. I did.

14 Q. Can you tell me when that was?

15 A. September -- January 14, a couple weeks ago.

16 Q. And where did you see them?

17 A. I was at Ms. Harlem in Harlem at an open mic. and they were
18 seated next to myself and my daughter.

19 Q. Okay. And did you have any discussions with them about
20 upcoming performances?

21 MR. BESSER: This is pure hearsay. I object to the
22 whole line of questioning.

23 THE COURT: If it's offered for its truth, it is. If
24 it's offered for the fact it's said, it's not.

25 And I don't know yet which it is, so you can proceed,

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1 and we'll see.

2 MS. MATZ: Okay.

3 Q. Can you tell me what the sum and substance was of your
4 conversation?

5 A. Well, Sakina was sitting with me most of the time. Robert
6 was sitting at the other table until the end. When she came
7 over, she was just getting reacquainted and said it was great
8 to see me and she asked how Ray was doing. And then at the
9 end, when they were about to leave, Robert came over and joined
10 us, and Sakina said to be sure to tell Ray that they said hello
11 and they look forward to seeing him at their next gig.

12 Q. Are you aware that -- whether or not Sixuvus has any
13 upcoming performances with Kool & The Gang?

14 A. No, they don't.

15 Q. And are you aware of whether or not Intervenor's group has
16 any upcoming performances with Kool & The Gang?

17 A. Yes.

18 Q. So, it's your understanding that she was referencing
19 Intervenor's upcoming performances when she said that?

20 A. At the time I didn't realize that's what she meant, but I
21 do now.

22 MR. BESSER: This is a lack of foundation. How could
23 she know what she meant? This is just pure speculation.

24 THE COURT: Well, she's inferring from the fact that
25 that comment was made, the fact that the defendants don't have

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1 a gig, and from that alone, I think one could infer that the
2 declarant was talking about the other group. I don't know that
3 we have anything in the record that there is, in fact, a
4 performance with the other group, but --

5 MS. MATZ: We do. We put it in as Facebook evidence.
6 Intervenor posted an upcoming show on their wall. I can find
7 the exhibit number. It's Exhibit Q, one of the ones I just
8 reprinted.

9 THE COURT: It's an inference I can draw. It doesn't
10 really matter whether the witness draws it.

11 MR. BESSER: Then it's being offered for the truth of
12 what was said.

13 THE COURT: It's being offered for the fact that the
14 declarant believed that her husband's group and the witness'
15 husband's group were going to be performing together.

16 THE WITNESS: Exactly.

17 THE COURT: I don't think that's offered for its truth
18 because I don't think there's any evidence it's true. I think
19 it's being offered to show that the witness believed --
20 erroneously believed it to be true.

21 MS. MATZ: Thank you, your Honor.

22 Q. You said that part of what you do is you work with the
23 Facebook page for Sixuvus?

24 A. I do.

25 Q. And is that official Facebook.com/OfficialVillagePeople?

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L. Simpson - Cross - Besser

1 A. OfficialVillagePeople; yes.

2 Q. Do you know approximately how many fans Sixxvus has of that
3 Facebook page?

4 A. Approximately 40K. 40,000.

5 Q. And how long did that take to build up?

6 A. About ten years.

7 MS. MATZ: Thank you, your Honor. I don't have any
8 further questions.

9 THE COURT: Mr. Besser.

10 CROSS-EXAMINATION

11 BY MR. BESSER:

12 Q. Good morning.

13 A. Good morning.

14 Q. I was a little unclear as to the dates you were, as I
15 believe you put it, examining Mr. Weiss' e-mails back and
16 forth.

17 When did that occur?

18 A. I was there from 2009 to 2012.

19 Q. Two thousand- when?

20 A. '09.

21 Q. So between 2009 and 2012, you saw Mr. Weiss' correspondence
22 with Can't Stop?

23 A. Most of them, I'm sure.

24 Q. Now, I've just placed in front of you Plaintiff's
25 Exhibit 34. Would you look at it, please.

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1 (Pause)

2 A. Okay.

3 Q. Have you seen it before?

4 A. Yes.

5 Q. Now, this -- you would agree, this is a communication from
6 Mitch Weiss --

7 A. One of the rare few; yes.

8 Q. -- providing his schedule on page 2?

9 A. Yes, for the shows.

10 Q. And also providing general updated information about the
11 group.

12 A. This isn't a normal schedule. This is a schedule -- okay.
13 Let me look at this again. Sorry. Oh, okay. Uh-huh.

14 MR. BESSER: I'd offer 34 into evidence, your Honor.

15 THE COURT: 34 is received.

16 (Plaintiff's Exhibit 34 received in evidence)

17 Q. I've just placed in front of you the exhibit that has been
18 marked as Plaintiff's 35. I ask you to look at that and tell
19 me whether you've seen it before.

20 A. Yes.

21 Q. And this, again, is a e-mail from Mitch Weiss to Henri
22 giving him an updated schedule; isn't it?

23 A. It looks like he did it once a year.

24 Q. And this is during the time period you where are there --

25 A. Yes.

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1 Q. -- when you told us he didn't do this?

2 A. Well, he didn't. He rarely did anything. This is a year
3 apart.

4 MR. BESSER: I offer 35 in evidence, your Honor.

5 THE COURT: It's received.

6 (Plaintiff's Exhibit 35 received in evidence)

7 Q. I've just handed you Exhibit 36, and I would like you to
8 take a look at it and tell me whether you've seen that before.

9 A. It appears he's updating him yearly.

10 Q. I'm sorry?

11 A. It appears that he's updating him yearly.

12 Q. My question is, have you seen this before?

13 A. No, I haven't seen this one.

14 Q. You do see that he's giving Henri information about the
15 tour and other related information such as Sixuvus offices are
16 moving, things like that?

17 A. He's just -- it's a friendly conversation. He's letting
18 him know what's happening with us. Said he -- he says hasn't
19 spoken in years. It feels like we haven't spoken in years.

20 THE COURT: There you go.

21 A. It seems to me like he's just updating him each year.
22 You've shown '10, '11 and now '12.

23 Q. Well, you told us that he didn't do this.

24 A. On a regular basis, he did not.

25 MR. BESSER: I'll I offer 36 in evidence.

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1 MS. MATZ: No objection.

2 THE COURT: Received.

3 (Plaintiff's Exhibit 36 received in evidence)

4 Q. I believe you told us you never met Mr. Belolo, either
5 Mr. Henri Belolo or his son Belolo?

6 A. Correct.

7 Q. Does that mean you were never at any concerts that he
8 attended?

9 A. Correct.

10 Q. You don't know whether or not he attended concerts, do you?

11 A. No.

12 Q. You don't know what activities Mr. -- or Henri, to take the
13 Senior, you don't know what activities Henri monitored, what he
14 said to the group at all, do you?

15 A. I know what he did with Sixuvus.

16 Q. Were you present at any meetings he had with Sixuvus?

17 A. No.

18 Were there any meetings?

19 Q. You don't know whether there were any meetings, do you?

20 A. I've been a part of all meetings during the time I was
21 there, and I don't recall there ever being a meeting that was
22 requested with Henri because I would have been there.

23 Q. To be specific, you were there for three years, 2009 to
24 2012?

25 A. And then from 2014 on.

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1 Q. And during those first three years, you don't recall any
2 meetings?

3 A. Not any business meetings, no.

4 Q. Were you present for the litigation in San Diego at all?

5 A. No.

6 Q. Do you know what role, if any, Can't Stop played in that
7 litigation?

8 A. Yes.

9 Q. What is -- what is your belief as to what role?

10 A. Oh, they were in a lawsuit against Karen and Victor Willis.

11 Q. Your husband testified earlier, or someone testified from
12 Sixuvus, I'm not sure who it was, that Can't Stop was on the
13 same side as Karen and Victor Willis.

14 That's not true, is it?

15 A. No.

16 Q. Were you aware that Can't Stop had extensive discussions
17 with Sixuvus involving supporting them by paying their legal
18 fees?

19 A. I don't recall.

20 Q. Are you aware of any discussions that took place during
21 that three-year period?

22 A. Yes.

23 Q. What are you aware of, that is, discussions between Can't
24 Stop and Sixuvus?

25 A. Oh, okay. I'm aware of what was going on, but I wasn't

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1 aware of the discussions that had anything to do with Sixuvus
2 as a company. There were none.

3 Q. Were you aware that members of Sixuvus attended
4 depositions?

5 A. Absolutely.

6 Q. And were you aware that Henri was present at some of those
7 depositions?

8 A. No.

9 Q. Were you aware that when Sixuvus appeared in France, Henri
10 was present at performances?

11 A. I don't know about performances. I know about a
12 performance.

13 Q. Were you present at any of the performances?

14 A. No.

15 Q. So you don't know whether they discussed anything to do
16 with the group at that time, that would be Henri and --

17 A. No. I wouldn't be aware of it because I wasn't there.

18 MR. BESSER: I have nothing further, your Honor.

19 THE COURT: Ms. Willis.

20 CROSS-EXAMINATION

21 BY MS. WILLIS:

22 Q. Good afternoon, Ms. Simpson.

23 A. Good afternoon, Ms. Willis.

24 Q. You testified earlier or you implied, at least, on the
25 record here that Robert "Kool" Bell, and possibly his wife, was

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1 unaware that the Village People featuring Victor Willis was
2 performing with them; isn't that correct?

3 MS. MATZ: Objection; mischaracterizes the testimony.

4 THE WITNESS: I don't understand the question.

5 THE COURT: Rephrase the question.

6 BY MS. WILLIS:

7 Q. Didn't you testify that you had a meeting or you met with
8 Robert "Kool" Bell and his wife, and isn't it true that you --
9 your position to the Court was that they were unaware, Robert
10 "Kool" Bell and his wife was unaware that Village People
11 featuring Victor Willis was performing on the bill with them?
12 Didn't you testify to that?

13 A. My position with the Court is that I did not meet with
14 them. I saw them there. We were seated next to each other.
15 Sakina came over and sat with me and started talking to me and
16 asked me how things were going with Raymond and I in our lives
17 because we're friends.

18 At the end, I said that Robert came over and joined
19 us. And she told me to tell Raymond to give him their best and
20 that she looked forward to seeing him at the next gig.

21 I don't know anything about what you're talking about.

22 Q. "The next gig." Did she say what gig that was?

23 A. No.

24 Q. Ms. Simpson, who is Tia Sinclaire? Do you know you sent
25 over -- isn't it true --

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1 A. I don't know a Tia Sinclair.

2 Q. Isn't it true that you sent over some communication
3 regarding Robert "Kool" Bell to a person related to the Village
4 People featuring Victor Willis' performance with Kool & The
5 Gang?

6 A. Say that again.

7 Q. Isn't it true, Ms. Simpson, that you had communication,
8 written communication via e-mail, to someone complaining about
9 the performance with Robert "Kool" Bell, Kool & The Gang's
10 performance with Victor Willis and the Village People. Isn't
11 that true?

12 A. No.

13 Q. So you didn't have any communication -- you've not had any
14 communication with anyone regarding the performance of Village
15 People featuring Victor Willis and the Kool & The Gang?

16 MS. MATZ: Objection to form. That wasn't the prior
17 question.

18 THE COURT: She didn't say she had no communication.
19 She said she didn't complain.

20 THE WITNESS: Right.

21 Q. Isn't it true that you had communication with someone
22 regarding -- by the way -- rephrase this.

23 Isn't it true that you had written communication with
24 someone regarding Village People featuring Victor Willis and
25 Kool & The Gang?

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1 A. No. That wasn't what it was regarding.

2 Q. Really? Why don't you tell us what it was regarding,
3 Ms. Simpson.

4 A. We were tagged on Facebook that we were performing with
5 Kool & The Gang; that's when it came to my attention that there
6 was going to be a performance in July.

7 I asked the person - I do not know who it was - to
8 please untag us.

9 Q. So it is true that you had communications with someone
10 regarding Kool & The Gang and Victor Willis?

11 A. I don't know who that was. I just asked that whoever it
12 was that tagged us, untag us. I don't know who it was.

13 Q. Mrs. Simpson, isn't it true --

14 THE COURT: It sounds like the witness had
15 communication with this unknown person who tagged Sixuvus --

16 THE WITNESS: Yeah.

17 THE COURT: -- regarding Sixuvus and Kool & The Gang
18 to say we're not performing.

19 THE WITNESS: I didn't want it on my page, on our
20 page.

21 MS. WILLIS: Your Honor, she said she had no
22 communication at all.

23 THE COURT: Well, you asked her if she had
24 communication regarding Kool & The Gang and Victor Willis.

25 She sounds like she's saying her communication was

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1 regarding Kool & The Gang and Sixxus' version of Village
2 People.

3 Either way, I'm not sure what the relevance is.

4 MS. WILLIS: Actually, it's not.

5 THE COURT: If you want to put a document in evidence
6 and put us all out of our misery, go ahead, but I'm not sure
7 what the relevance is.

8 MS. WILLIS: Okay. The relevance is I'm basically
9 rebutting something that she testified to earlier. It was her,
10 your Honor, who brought up the issue of Village People and Kool
11 & The Gang. You know that's what --

12 THE COURT: She didn't say anything about
13 communicating with third persons. You've brought that up. I
14 would like to know the relevance of it.

15 MS. WILLIS: The relevance is that I am rebutting her
16 conversation, her testimony.

17 THE COURT: What did she say that this communication
18 rebuts?

19 MS. WILLIS: I will read it into the record, then,
20 your Honor. I have a communication here that was --

21 THE COURT: You have to mark it as an exhibit and show
22 it to the witness and she'll tell you if it's authentic, and
23 then you can read it into the record once it's in evidence.

24 MS. WILLIS: All right. I wasn't planning on entering
25 it into the record. I was --

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1 THE COURT: You don't have to do anything, but you
2 need to explain to me how it rebuts something that she said.

3 MS. WILLIS: Well, she claimed --

4 THE COURT: And in the event it does rebut something
5 that she says, you need to put it in the record.

6 MS. WILLIS: Okay. She claims that in her meeting
7 that Robert "Kool" Bell, or Kool & The Gang, was unaware that
8 it was Village People featuring Victor Willis.

9 THE COURT: She testified that they said they were
10 looking forward to seeing Ray at the next gig and she may have
11 inferred or defendants may want me to infer that they were
12 under the mistaken impression that it was Village People
13 featuring Ray Simpson that they had a gig with.

14 MS. WILLIS: That's what I'm rebutting, right there.

15 THE COURT: What is it in that document that
16 undermines the witness' testimony?

17 MS. WILLIS: Well, shall I read?

18 THE COURT: Does it show anything about Kool & The
19 Gang's state of mind?

20 MS. WILLIS: It does. It shows that Ms. Simpson here
21 was very much aware that Kool & The Gang didn't make any such
22 representation at all.

23 I'll read it here.

24 THE COURT: What's the date of that?

25 MS. WILLIS: This is an e-mail that was forwarded.

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1 The date of this is January 25, 2018. It was forwarded over to
2 Sal Michaels and on to me, to a lady by the name of Tia
3 Sinclair, whereby Ms. Simpson sent over a communication
4 complaining about the performance of Village People
5 featuring --

6 THE COURT: Let me see it. I can't make head nor tail
7 out of what you're saying. Why don't you hand it up. We'll
8 mark it as whatever your next exhibit is.

9 What's your next exhibit?

10 MS. MATZ: Can we get a copy?

11 MS. WILLIS: I have to make copies of that.

12 THE COURT: What's your next exhibit?

13 MS. WILLIS: I believe it would be 14.

14 THE COURT: All right. Intervenor's Exhibit 14. I'm
15 going to take a look at it, and then I'll let the other parties
16 take a look at it.

17 MS. WILLIS: Sure. And I'll pass it around. Sure.

18 (Pause)

19 THE COURT: Show it to the other parties. It does
20 tend to suggest that the inference that the defendant wants me
21 to draw is not the inference that Ms. Simpson drew at the time
22 of her conference with -- excuse me -- at the time that she ran
23 into Mr. Bell and his wife.

24 MS. MATZ: My only issue with this is I have no idea
25 who is writing. It says "from Tia Sinclair," and then it

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1 says, "Hi, I'm Leslie Simpson."

2 THE COURT: It sounds like it's a forward.

3 MS. WILLIS: And I said that on the record.

4 THE COURT: The witness can tell us whether she wrote
5 the content or not. If she says that's not her e-mail, then we
6 have an authentication issue, but if it is, I'll receive it for
7 what it's worth.

8 MS. MATZ: All right.

9 THE COURT: Has Mr. Besser seen it yet?

10 MS. WILLIS: And if she does not, I can get the actual
11 long-form e-mail in. I can give it to you in a second.

12 (Pause)

13 THE COURT: Right now the question is, Ms. Simpson, is
14 the part of that document that begins "Hi, I'm Leslie Simpson,"
15 is that written by you?

16 THE WITNESS: May I read it.

17 THE COURT: Yes. Of course.

18 THE WITNESS: Thank you.

19 (Pause)

20 THE WITNESS: Oh, yes.

21 THE COURT: All right. I'll receive Intervenor's
22 Exhibit --

23 THE WITNESS: But that proves that I didn't know
24 because it says it right there --

25 THE COURT: What did we say? 14, is that what we

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1 decided?

2 MS. WILLIS: 14, your Honor.

3 THE COURT: All right. And you'll need to send a copy
4 of that to the Court and the other parties.

5 (Intervenor Exhibit 14 received in evidence)

6 BY MS. WILLIS:

7 Q. So Ms. Simpson, when you told your story to the Court
8 inferring what your Honor has stated earlier --

9 THE COURT: Let me ask a question.

10 Ms. Simpson, when you had the conversation with
11 Ms. Bell at the club, did you, at that time, understand that
12 she was referring to a particular gig that had been scheduled
13 or did you understand that she was just talking generally about
14 the future?

15 THE WITNESS: I just thought she was saying see them
16 soon, you know. I didn't know when or where until I saw that.

17 THE COURT: So if I understand you, when you saw that
18 tag, that's when you put two and two together?

19 THE WITNESS: Yeah.

20 THE COURT: All right. Now I get it.

21 Go on, Ms. Willis.

22 MS. WILLIS: Well, your Honor, she -- your Honor
23 leaded her into that, but, you know, she had made it clear on
24 the record what she meant.

25 Q. So my question to you, Ms. Simpson, since you've changed

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1 your story here, --

2 MS. MATZ: Objection, your Honor.

3 THE COURT: No. I think what happened is the
4 defendants wanted me to draw an inference from the
5 conversation. I don't think the witness said that she drew,
6 herself, that inference at the time. And before I said a word,
7 the witness said something to the effect that this e-mail shows
8 that she didn't draw that inference at the time.

9 BY MS. WILLIS:

10 Q. Well, she -- well, my question to Ms. Simpson would be were
11 you lying about it then?

12 THE COURT: Sustained.

13 Q. Well, your Honor, I can ask her is she lying about it now?

14 MS. MATZ: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. Or is she, in fact, a pathological liar?

17 MS. MATZ: Objection.

18 THE COURT: Sustained.

19 MS. WILLIS: That's all, your Honor.

20 THE COURT: Any redirect, Ms. Matz?

21 MS. MATZ: Give me one moment. I'm going to be brief.

22 REDIRECT EXAMINATION

23 BY MS. MATZ:

24 Q. Mrs. Simpson, if you could please look at Plaintiff's 34
25 that was handed to you earlier by Mr. Besser. It says P34 in

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1 the bottom corner.

2 A. Uh-huh, yes.

3 Q. And I believe you testified this was one of the e-mails you
4 had seen; is that right?

5 A. Yes.

6 Q. And do you see down the, kind of, second paragraph from the
7 bottom, it says, "I plan to be in San Diego when, ellipses,
8 dash, dash, dash, close ellipses, is deposed"?

9 THE COURT: I think you mean paren, dash, dash, dash,
10 close paren?

11 MS. MATZ: Yes. I guess I call them ellipsis. I will
12 call them parens.

13 THE COURT: To me, I think an ellipsis is dot, dot,
14 dot.

15 MS. MATZ: I think your Honor is actually right about
16 that. Sorry.

17 Q. It says, "Awaiting confirmation of dates and ready for my
18 deposition. Hopefully, it won't be needed, comma, but, dot,
19 dot, dot."

20 THE COURT: There's your ellipsis.

21 MS. MATZ: Yeah. I appreciate that, your Honor.

22 Q. Do you see that?

23 A. Yes.

24 Q. Is your understanding at least part of this communication
25 was also about the lawsuit --

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1 A. Yes.

2 Q. -- that was happening in San Diego?

3 A. Yes.

4 Q. Just so I can understand clearly, after your conversation
5 with Mr. and Mrs. -- Mrs. Bell from Kool & The Gang, you said
6 you saw a "like" on a Facebook post, and that's what led you to
7 make the connection?

8 A. Our page was tagged by -- saying that we were the people --
9 that Sixuvus was the performers; they sent it to us so we would
10 be a part of that post.

11 Q. Okay. And do you recall approximately how long after you
12 saw Mrs. Bell that you saw that post?

13 A. I'd say about maybe two weeks.

14 Q. Okay. And at that point, had you become aware that the
15 Intervenor had an upcoming show with Kool & The Gang?

16 A. That's when I became aware.

17 Q. So that was the basis for your belief that they had thought
18 that Sixuvus was going to be performing with Kool & The Gang --

19 A. Yes.

20 Q. -- in an upcoming gig?

21 A. Yes.

22 Q. Thank you very much. I appreciate your time.

23 THE COURT: Anything else, Mr. Besser?

24 MR. BESSER: Nothing further, your Honor.

25 THE COURT: Ms. Willis.

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L. Simpson - Recross - Willis

1 RECROSS EXAMINATION

2 BY MS. WILLIS:

3 Q. Isn't it true, Ms. Simpson, that the purpose of the
4 communications on Exhibit 22 was to interfere with the
5 performance of Village People featuring Victor Willis?

6 THE COURT: 22?

7 MS. WILLIS: I'm sorry. For the record, I made a
8 mistake. It's -- instead of Intervenor 14 it should be 22. So
9 let's make that change. I'm so sorry about that. I crossed it
10 out.

11 MS. MATZ: I don't think we have anything past 12.

12 MS. WILLIS: I have other exhibits already marked.

13 MS. MATZ: It's marked.

14 THE COURT: So the e-mail forward will be -- that the
15 witness was shown on cross by Ms. Willis will be 22.

16 MS. WILLIS: Thank you, your Honor.

17 Q. So again, isn't it true that the purpose of this
18 communication to Kool & The Gang was to interfere with Village
19 People featuring Victor Willis' performance?

20 MS. MATZ: Objection to form.

21 THE COURT: The witness can answer if she understands
22 the question.

23 A. I was merely asking a question if they realize when they
24 sent it to us, that we weren't a part of it, because had I
25 known about it, I said I would have told Bobby and Sakina that

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1 it wasn't us.

2 Q. Isn't it true that they didn't send you anything,

3 Ms. Simpson?

4 MS. MATZ: Objection.

5 A. They tagged us.

6 Q. Could you explain what tagging means?

7 A. When they posted the -- this right here --

8 Q. At least, what is your understanding of tagging?

9 A. My understanding of tagging is when you are creating a show
10 that -- for example, creating a show that involves the other
11 person, you tag that person to let them know you're advertising
12 for -- on their behalf, as well as advertising for themselves.
13 So we were tagging advertisement, and it said it was official
14 Village People.

15 Q. So is that anything like the recent tag of the Sixxvus
16 Village People of -- Village People featuring Victor Willis
17 performance?

18 A. I'm sorry?

19 Q. Is it anything similar to that type of tag, meaning that
20 all that means is that someone has put your Facebook address as
21 opposed to this Victor Willis Facebook; isn't it true that's
22 all that means?

23 MS. MATZ: Objection to form.

24 A. I don't understand the question.

25 THE COURT: Sustained.

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L. Simpson - Recross - Willis

1 BY MS. WILLIS:

2 Q. Isn't it true that if someone tags another, meaning that
3 they have used your Facebook tag, isn't it true that they could
4 simply mistakenly tag that?

5 MS. MATZ: Objection to form.

6 A. I don't know.

7 MS. MATZ: This is argument.

8 THE COURT: Well, if I understand it, anybody can tag
9 anybody. Somebody could create an advertisement saying they're
10 performing with me. Anybody can tag anybody. And then, when
11 you get the notification that you've been tagged, you can
12 respond if you want. That's how I understand it.

13 Is that correct?

14 THE WITNESS: Yes.

15 BY MS. WILLIS:

16 Q. And isn't it true, Ms. Simpson, that immediately upon Kool
17 & The Gang discovering that they had actually tagged your
18 Facebook page as opposed to Victor Willis, isn't it true that
19 they removed it?

20 A. After I requested it, yes.

21 Q. Isn't it true that it was removed after they discovered it?

22 A. They discovered it because I informed them. That is the
23 reason I asked were they aware that it wasn't us.

24 Q. Were you aware that I informed them prior to you?

25 A. I don't know nothing about you and what you do.

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L. Simpson - Recross - Willis

1 Q. Okay. So you're not aware of that?

2 A. I'm aware that whoever responded to me said thank you for
3 giving us this information; we will remove the tag. They
4 didn't mention you.

5 Q. Isn't it true, Ms. Simpson, that the purpose of your
6 communication was to in fact attempt to malign Village People
7 featuring Victor Willis?

8 THE WITNESS: What's "malign" mean to you? I don't
9 know what "malign" means.

10 THE COURT: Badmouth.

11 Q. You don't know what --

12 A. Oh, no. I wasn't trying to badmouth; no.

13 Q. Really? Why don't I read this to you.

14 THE WITNESS: Could she?

15 Q. According to what you wrote here: Do you know if the
16 promoter who booked this knows it's not us? In fact, a
17 group -- in fact, a group that has been -- that has never been
18 nor seen perform, the reviews have I guess been terrible. It
19 is not too late to correct this.

20 A. Yes.

21 Q. Isn't it true that you're asking them to switch out Village
22 People featuring Victor Willis with the Sixxus Village People?

23 You said it was not too late.

24 A. Yes.

25 Q. And why would you want them to do that, Ms. Simpson?

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L. Simpson - Recross - Willis

1 A. Because they came to us, so I thought perhaps they had made
2 a mistake.

3 Q. So you just admitted on stage to interfering with this
4 event. You said that your purpose was to switch it out.

5 Your Honor --

6 MS. MATZ: Objection. At this point, she's yelling at
7 the witness.

8 THE COURT: I gather there's some history here, but
9 right now we're in a court of law. And you need to comport
10 yourself. Right now, you're acting as your own attorney, and
11 this is not the time to take out whatever emotions you have.

12 MS. WILLIS: And it's not that -- no problem.

13 THE COURT: Let's try to take a deep breath.

14 MS. WILLIS: She has admitted that the purpose of --

15 MS. MATZ: Objection; she's testifying.

16 THE COURT: Nothing Ms. Willis says from the podium
17 is testimony. She knows that.

18 MS. WILLIS: Thank you, your Honor.

19 THE COURT: She's trying to make an argument. I don't
20 remember what the question was. Let's see.

21 Put the question. The last question was a compound
22 question.

23 MS. WILLIS: I asked her whether or not her intent was
24 to have Kool & The Gang to -- she said it was not too late to
25 bring the Sixxvus version of Village People in to replace --

180206cantstopH Hearing

1 MS. MATZ: Objection to form. That's not what the
2 document says.

3 THE COURT: Well, since there's only one copy, I don't
4 remember exactly what it says, but the witness can answer the
5 following question: Was it your intent or your hope that Kool
6 & The Gang would say, oh, we don't want Victor Willis's group;
7 we want Sixxvus's group?

8 THE WITNESS: It was a question as to whether they
9 knew which group they had chosen since they brought it to my
10 attention that it was us.

11 Q. You said that it's not too late to correct this.

12 A. Yeah. They didn't know it wouldn't be --

13 Q. So you wanted them to bring your group in?

14 A. Yes.

15 MS. WILLIS: That is all, your Honor.

16 MS. MATZ: I don't have anything further.

17 THE COURT: You may step down, Ms. Simpson.

18 (Witness excused)

19 THE COURT: Let's take our morning break. We'll
20 resume at 11:40.

21 MR. BESSER: May I inquire. Are there additional
22 witnesses?

23 THE COURT: Is the defendant calling anyone else?

24 MS. MATZ: Subject to our right to call for
25 impeachment, no. And I do just want to leave the exhibit issue

180206cantstopH Hearing

1 that Mr. Adelman raised earlier open. We will be submitting
2 those additional --

3 THE COURT: Subject to that, the defendant rests.

4 What are you planning to do, Mr. Besser?

5 MR. BESSER: I'll call my witness.

6 THE COURT: And you'll be ready with your witness
7 right after, Ms. Willis?

8 MS. WILLIS: I should be. I can make a phone call.
9 It's ending earlier than we thought, which I'm happy about, by
10 the way.

11 THE COURT: Give your witness a ring, and we'll resume
12 at 11:40.

13 MS. WILLIS: Yes.

14 (Recess)

15 (In open court)

16 THE COURT: Mr. Besser, you can call your first
17 witness.

18 MR. BESSER: Yes. We'll call Jonathan Belolo.

19 THE COURT: Do we have to re-swear the witness? He
20 testified in the other case.

21 You're still under oath, Mr. Belolo.

22 THE WITNESS: Yes, ma'am.

23 JONATHAN BELOLO,

24 called as a witness by the Plaintiff,

25 having been previously duly sworn, testified as follows:

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J. Belolo - Direct - Besser

1 DIRECT EXAMINATION

2 BY MR. BESSER:

3 Q. Good morning.

4 A. Good morning.

5 Q. There has been some testimony in the case about a, I
6 believe we call it some kind of a mash-up?

7 A. Yes. I think you're referring to the mega-mix.

8 Q. And also to the costumes ran at the Trash Disco?

9 A. Absolutely; yes.

10 Q. Are you aware -- have you been aware that the Sixuvus group
11 has performed a Trash Disco song?

12 A. Yes, we were aware, myself and most of the people at the
13 Can't Stop/Scorpio.

14 Q. And you were aware of the costume worn during that song?

15 A. Yes. I was aware of the kind of costumes being worn, the
16 wigs, the different disco attire.

17 Q. Did you have the opportunity to view the costumes
18 firsthand?

19 A. I did.

20 Q. How so?

21 A. I saw them firsthand in 2008 or '09 when I was invited by
22 Mitch Weiss to visit Sixuvus' corporate offices.

23 Q. Did Can't Stop ever have any objections to the -- that
24 number being performed?

25 A. No.

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J. Belolo - Direct - Besser

1 Q. I've just handed you what's been marked as Plaintiff
2 Exhibit 37.

3 A. Yes.

4 Q. Do you recognize it?

5 A. I do.

6 Q. Are these records that were maintained by Can't Stop in
7 their offices?

8 A. Yes. It's exactly that.

9 MR. BESSER: I'd offer 37 into evidence, your Honor.

10 MR. ADELMAN: Objection to authenticity.

11 THE COURT: Did you say, Mr. Belolo, that you
12 recognized all of Exhibit 37 as being a document in the files
13 of Can't Stop?

14 THE WITNESS: To be thorough, I'm just going to review
15 them once more.

16 (Pause)

17 THE WITNESS: Yes. They're all in our corporate
18 records.

19 THE COURT: All right. Were they -- are those
20 records -- were these documents made and kept in the ordinary
21 course of business of Can't Stop and Scorpio?

22 THE WITNESS: Yes. Yes, your Honor.

23 THE COURT: And were they obtained from those files
24 recently?

25 THE WITNESS: Yes. We did a copy of the documents

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J. Belolo - Direct - Besser

1 recently.

2 THE COURT: And are these true and accurate copies?

3 THE WITNESS: I believe they are.

4 THE COURT: All right. They're received. Plaintiff's
5 37 is received.

6 (Plaintiff's Exhibit 37 received in evidence)

7 THE WITNESS: Thank you.

8 Q. I've just handed you what has been marked as Plaintiff
9 Exhibit's 39.

10 A. Yes.

11 Q. I would ask you to look at these documents.

12 A. I can see them.

13 Q. Are these from the corporate records of Can't Stop?

14 A. Yes, they are.

15 Q. Were they recently-obtained copies?

16 A. Yes.

17 Q. And these particular documents have been maintained in the
18 corporate records of Can't Stop?

19 A. They have.

20 Q. Since approximately 1990?

21 A. Yes.

22 MR. BESSER: I offer 39, your Honor.

23 MR. ADELMAN: No objection.

24 THE COURT: Received.

25 (Plaintiff's Exhibit 39 received in evidence)

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J. Belolo - Direct - Besser

1 BY MR. BESSER:

2 Q. Now, I note that on the third page of Exhibit 39, you see
3 that it's a fax from -- excuse me -- to Stephen Kopitko?

4 A. Yes.

5 Q. And that's the attorney for Can't Stop?

6 A. It was the attorney for Can't Stop.

7 Q. And it's from Mitchell Weiss?

8 A. Yes.

9 Q. And the second paragraph refers to the issues that Sixuvus
10 had with Howard Silverman?

11 A. Yes. Do you want me to read it?

12 Q. It's not necessary.

13 A. Okay.

14 Q. Then I call your attention to the bottom paragraph of that
15 page.

16 A. Uh-huh.

17 Q. You see the last sentence?

18 A. "Since this agreement..." Okay.

19 Q. You can read it.

20 A. Okay: Since this agreement is restricted to one year
21 anyway, we won't -- why we won't -- no, sorry -- why won't he
22 just let them do their best with the name Village People for 5%
23 of everything with the contingency that he will informed of all
24 in advance, a very simple proposal.

25 Q. And then, the next paragraph at -- actually, it would be

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J. Belolo - Direct - Besser

1 the second paragraph in that next page?

2 A. It says: So the bottom line is, yes, they will happily
3 sign licensing agreement with Henri. We are not trying to play
4 negotiations here, only to ask Henri for an agreement
5 with Gateway -- I suppose "which" -- what gives them the
6 ability to make a living as Village People. Within a year, we
7 will all know if they can make a success of themselves, and
8 then, hopefully, Henri will probably choose to extend the
9 option.

10 Q. Sir, I've just handed you what we've marked Plaintiff
11 Exhibit 40, which is a photograph or a copy of a photograph.
12 Is this document taken from the files of Can't Stop?

13 A. Yes, it is.

14 Q. Regularly maintained in the course of their business?

15 A. Absolutely.

16 Q. Do you know what it is?

17 A. Yeah, I know what it is. It's a picture of the Village
18 People and all the crew - the trucks, cars, transportation -
19 that was in place during the touring -- extensive touring of
20 the U.S.A. in '79, '78, '79.

21 Q. Are you referring to the tour you told us about
22 your testimony three days ago?

23 A. Absolutely. It was a tour of 50-plus dates produced by
24 Can't Stop with a huge production. You can see some of the
25 trucks there, some of the cast, and some of the members. You

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J. Belolo - Direct - Besser

1 can see Randy Jones, Alex Briley, David Hodo -- oh, I can even
2 see Raymond Simpson. I think it's him. Yes. And Glenn
3 Hughes.

4 MR. BESSER: I offer 40 into evidence, your Honor.

5 MR. ADELMAN: No objection.

6 THE COURT: Forty is received.

7 (Plaintiff's Exhibit 40 received in evidence)

8 Q. Okay, sir, I've just handed you what's been marked as
9 Plaintiff Exhibit 41, which is a photograph.

10 A. Yes.

11 Q. Do you recognize it?

12 A. I do.

13 Q. Is this a photograph kept in the records of Can't Stop?

14 A. It is.

15 Q. And who's in the photograph?

16 A. You can see members of Sixxvus and my father, Henri Belolo.

17 Q. And can you tell from looking at the photograph where it
18 was taken?

19 A. I can't tell where it was taken. I can -- it was probably
20 in France, but I don't know for sure.

21 Q. But can you tell whether it was backstage at a performance,
22 for example?

23 MR. ADELMAN: Objection.

24 THE COURT: Don't lead.

25 MR. BESSER: I won't.

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J. Belolo - Direct - Besser

1 Q. Can you tell -- is there anything about the situation that
2 you can tell us?

3 A. Well, you can see my father is wearing a pass around his
4 neck, and Sixuvus are in full attire, so it was either
5 backstage at a concert or a TV show, some type of appearance,
6 live, and it was in 1997.

7 MR. BESSER: I offer 41 into evidence, your Honor.

8 MR. ADELMAN: No objection.

9 THE COURT: 41 is received.

10 (Plaintiff's Exhibit 41 received in evidence)

11 Q. Sir, I've just handed you what's been marked Plaintiff
12 Exhibit 42.

13 A. Uh-huh.

14 Q. Do you recognize it?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a copy, scan of a front page of the "Rolling Stone"
18 magazine dated April 19, 1979. "Rolling Stone" magazine is a
19 very famous rock-n'-roll magazine music.

20 Q. What was the date?

21 A. '79, April.

22 Q. And what was the balance -- are the remaining pages from
23 the article on "Rolling Stone"?

24 A. Yes. The first page is the front cover of the magazine,
25 and then those are pages from the article inside the magazine.

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J. Belolo - Direct - Besser

1 Q. And has Can't Stop kept a copy of this article since it
2 came out?

3 A. Yes. Absolutely.

4 MR. BESSER: I'll offer 42.

5 MR. ADELMAN: Objection. It's hearsay, and it's not
6 even a business record. It's a magazine. There's no business
7 conducted with it.

8 THE COURT: Is it being offered for the truth of
9 what's asserted in it or for some other purpose?

10 MR. BESSER: It's offered to show that, because
11 "Rolling Stone" is such a well-recognized magazine in the music
12 world, it's offered to show the impression of the customer base
13 of what -- of what Village People were, in particular, the
14 second page where it says "The cartoon that conquered the
15 world." And then it follows with interviews and descriptions,
16 but it's just -- it goes to what --

17 MR. ADELMAN: Then I have no objection to the first
18 two pages, but I have objection to the article.

19 THE COURT: Well, I'm not receiving it for its truth.

20 I'll receive it not for the truth of the matters
21 asserted, but just for the fact that the act in 1979 rated this
22 much coverage in "Rolling Stone."

23 MR. ADELMAN: Thank you.

24 (Plaintiff's Exhibit 42 received in evidence)

25

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J. Belolo - Direct - Besser

1 BY MR. BESSER:

2 Q. Sir, I've just handed you what's been marked Plaintiff
3 Exhibit 43. Can you tell us what it is.

4 A. It is a scan of the front page of the magazine called
5 "Record Mart and Buyer" dated January 2000.

6 Q. Are you familiar with the magazine "Record Mart and Buyer"?

7 A. Yes, I am.

8 Q. Can you tell us generally what it is.

9 A. It's an industry magazine that's distributed to buyers in
10 the music industry, and it's freely available as well to be --
11 was, anyway -- freely available to buy in the newsstands. I
12 think it's a U.K. magazine, but I might be wrong.

13 Q. Is this something that has been maintained in the files of
14 Can't Stop?

15 A. Yes.

16 MR. BESSER: I'll offer 43 into evidence.

17 MR. ADELMAN: Same objection. It's not a business
18 record.

19 MR. BESSER: It's offered for the same purpose, your
20 Honor.

21 THE COURT: Same ruling. It's authenticated because
22 the witness says it's been maintained in the files, and I'm not
23 receiving it for its truth.

24 (Plaintiff's Exhibit 43 received in evidence)

25

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J. Belolo - Direct - Besser

1 BY MR. BESSER:

2 Q. I've just handed you what's been marked Plaintiff

3 Exhibit 48. Can you tell me -- look at it first and tell me
4 what it is.

5 A. It's a correspondence by e-mail between an Alex Jarrett and
6 Mr. Weiss, or at least somebody at the Sixuvus AOL.com e-mail,
7 address replying signing Sixuvus Ltd.

8 Q. At the time of this correspondence, which is
9 September 2008, was a copy of it provided to Can't Stop?

10 A. Yes. You can see a copy, vibelaw@aol.com is our attorney,
11 Stephen Kopitko. He forwarded that to us.

12 Q. And has this been maintained in the corporate record since
13 2008?

14 A. Yes.

15 MR. BESSER: I offer 48 into evidence.

16 MR. ADELMAN: Objection as to authentication.

17 I'm sorry, what did he say about his attorney?

18 THE WITNESS: This is the e-mail address of Stephen
19 Kopitko, vibelaw@aol.com.

20 THE COURT: Oh, vibelaw@aol.com. So, Kopitko is CCed
21 on this e-mail?

22 THE WITNESS: Yeah.

23 THE COURT: And was this in the files of Mr. Kopitko
24 or of Can't Stop?

25 THE WITNESS: It's in our files. I believe

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J. Belolo - Direct - Besser

1 Mr. Kopitko forwarded that e-mail to us, in particular, my
2 father, and that's how it became part of our covered records.

3 MR. ADELMAN: There's no "forward" here, your Honor.
4 That's the CC --

5 THE COURT: Did you find this in paper form or in
6 electronic form?

7 THE WITNESS: This one, I didn't find myself. It's my
8 father who gave it to me.

9 THE COURT: Do you know if he found it in paper form
10 in the files or if he found it in his e-mails or in the
11 company's e-mails?

12 THE WITNESS: My father keeps a paper copy of every
13 e-mail every received or sent because he's an old-school person
14 and he likes to print everything. So I'm pretty sure he would
15 have scanned it and sent it to me by e-mail that way.

16 THE COURT: I'll receive it.

17 (Plaintiff's Exhibit 48 received in evidence)

18 THE COURT: It wouldn't suffice at a trial, but this
19 isn't a trial.

20 MR. ADELMAN: Okay.

21 Q. Sir, I have just handed you what's been marked Plaintiff
22 Exhibit's 49.

23 A. Yes.

24 Q. Ask you to look at it and tell me whether you recognize it.

25 A. I do.

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J. Belolo - Direct - Besser

1 Q. And is this a copy of a document maintained in the files of
2 Can't Stop?

3 A. It is.

4 Q. I notice the date is 2013. Has it been kept there since
5 2013?

6 A. Yes.

7 Q. Now, it's from Mitch at Sixuvus telling Henri or telling
8 you, Can't Stop, I guess, a few things, right?

9 A. It is. It's addressed to Henri Belolo, myself, and my
10 brother, Marguerite DeCarlo, and Stewart Levy. And it's
11 regarding a couple items, one of them is the record that
12 Sixuvus recorded with KC, Let's Go Back to the Dance Floor."

13 MR. ADELMAN: Objection. The document is not in yet.
14 He's testifying.

15 THE WITNESS: Okay.

16 MR. BESSER: I'll offer 49 into evidence.

17 THE COURT: It's received.

18 (Plaintiff's Exhibit 49 received in evidence)

19 A. Mitch is also telling us about Jim Newman, telling us when
20 his performance will be, about his contracts, that he was
21 feeling very good about his addition, and that he would send us
22 a photo shoot as soon as he have it. He's also -- Mitch is
23 also talking about a press release.

24 Q. Which he's proposing to send to you?

25 A. Absolutely. He's, in particular, saying that it will

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J. Belolo - Direct - Besser

1 include our trademark info that he'll send it to us, of course.

2 THE COURT: Did you understand the press release to be
3 about Jim Newman or something else?

4 THE WITNESS: It's hard to say, but I would think the
5 press release was rather about the new single coming out.

6 THE COURT: Okay.

7 BY MR. BESSER:

8 Q. I've handed you a document which has been marked
9 Plaintiff's 53.

10 A. Uh-huh.

11 Q. I'd like you to look at it, tell me whether you can
12 identify it.

13 A. I can identify it as being an e-mail between Mitch Weiss
14 and my father, Henri Belolo.

15 Q. And also a second page.

16 A. Yes. That's -- it's a related e-mail.

17 Q. We were talking about press releases, and this has
18 something to do with press release, without telling me what
19 yet; correct?

20 A. Yes.

21 Q. And this is part of the corporate records of Can't Stop?

22 A. It is.

23 MR. BESSER: I offer 53 into evidence.

24 THE COURT: It's received.

25 (Plaintiff's Exhibit 53 received in evidence)

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J. Belolo - Direct - Besser

1 Q. Now, the press release talked about in here is not the
2 press release we just mentioned a few minutes ago in 2013; is
3 that correct?

4 A. No, it's not.

5 Q. In this press release, there's a discussion or a
6 discussion -- excuse me, I'll withdraw it and rephrase.

7 There's a discussion of a press release that Can't
8 Stop is paying for; is that right?

9 A. That's right.

10 Q. And did, in fact, Can't Stop pay for a press release for
11 Sixuvus?

12 A. I believe we did. We'd have to check.

13 MR. ADELMAN: Objection. That mischaracterizes the
14 e-mail.

15 THE COURT: It looks like it's about a press
16 representative.

17 MR. BESSER: Oh, excuse me. Not press release. I
18 misspoke. You're right, your Honor.

19 Q. It's a press representative that's being hired by Sixuvus?

20 A. Yes, and his job would be to do press releases.

21 THE COURT: And did you say whether Can't Stop, in
22 fact, paid for that?

23 THE WITNESS: I couldn't confirm yet. I'll find out
24 through our accounting, but I'm suspect we did, at least half.

25 Q. I've handed you a document marked Plaintiff's 50.

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J. Belolo - Direct - Besser

1 A. Yes.

2 Q. Can you tell me if you recognize it.

3 A. I do.

4 Q. And does this come from the corporate records of Can't
5 Stop?

6 A. It does.

7 MR. BESSER: I'll offer 50 in evidence, your Honor.

8 MR. ADELMAN: No objection.

9 THE COURT: Received.

10 (Plaintiff's Exhibit 50 received in evidence)

11 Q. The second page is what, sir?

12 A. The second page appears to be a flier or a general booklet
13 representing and promoting Sixuvus as the Village People and
14 mentioning the names of the performers.

15 Q. And the -- part of the purpose of this e-mail was
16 Marguerite DeCarlo approved that photo; is that correct?

17 A. That's correct.

18 Q. Who is Marguerite DeCarlo?

19 A. Currently, she is the president of Can't Stop.

20 Q. Was she the president in, 2013?

21 A. I don't believe she was, but she was an employee of Can't
22 Stop.

23 Q. I've just handed you a copy of a two-page document that has
24 been marked as Plaintiff Exhibit 51.

25 A. Yes.

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J. Belolo - Direct - Besser

1 Q. You recognize it?

2 A. I do.

3 Q. The author of the document is Mr. Stewart Levy?

4 A. Yes.

5 Q. That's Mr. Levy who is sitting here at this moment?

6 A. I'm pretty sure it is.

7 Q. And did he write this in connection with business of Can't
8 Stop?

9 A. Yes, he did.

10 Q. At the request of Can't Stop?

11 A. Yes.

12 MR. BESSER: I offer 51 into evidence, your Honor.

13 THE COURT: 51 is received.

14 (Plaintiff's Exhibit 51 received in evidence)

15 Q. What was the purpose of Exhibit 51?

16 A. In this particular instance, the purpose was to put on
17 notice the Royal Caribbean Cruises that they were employing a
18 band -- that the band they were employing to perform live on
19 their cruise ships under the name Village People was in fact
20 not Village People and that it was fraudulent; and we're asking
21 them to stop, basically. It's -- we have many of those. It's
22 examples of us trying to police the trademark, in this
23 particular instance, as it relates to live performances.

24 Q. Do you know whether they stopped the performance?

25 A. They stopped.

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J. Belolo - Direct - Besser

1 THE COURT: If there's going to be a bunch of these --

2 MR. BESSER: I'm almost done.

3 THE COURT: All right. I was going to say, maybe we
4 can hand them out in groups so you don't have to keep taking
5 the time to roam around the courtroom.

6 MR. BESSER: I'm getting my steps on my Fitbit, so
7 it's helping me, actually.

8 THE COURT: But it's also eating up the clock here.

9 MR. BESSER: I'm skipping through a lot of exhibits
10 that we're not going to use. I'm almost done.

11 THE COURT: Okay.

12 Q. Sir, do you see Exhibit 54 that I've just handed to you?

13 A. I do.

14 Q. Can you tell us what it is.

15 A. It's, again, an e-mail between Mitch Weiss and my father,
16 Henri Belolo.

17 Q. Is this part of the corporate records of Can't Stop?

18 A. It is. I'm copied on some of it myself.

19 MR. BESSER: I offer 54 into evidence, your Honor.

20 THE COURT: It's received.

21 (Plaintiff's Exhibit 54 received in evidence)

22 MR. BESSER: I'll be entering three more, and we'll be
23 done.

24 Q. I've just handed you Exhibit 57.

25 A. Yes.

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J. Belolo - Direct - Besser

1 Q. Do you recognize it?

2 A. Yes. It's an e-mail again from -- this time from my father
3 to Mitch Weiss.

4 Q. This is part of the corporate records of Can't Stop?

5 A. It is.

6 MR. BESSER: I offer 57, your Honor.

7 MR. ADELMAN: No objection.

8 THE COURT: 57 is received.

9 (Plaintiff's Exhibit 57 received in evidence)

10 Q. Do you see the first line where it says "Dear Mitch, thank
11 you for update."

12 A. Yep.

13 Q. "I was with the VPs at the Zenith, just came back. They
14 were superb."

15 A. Yes.

16 Q. Do you know what that means?

17 A. The VP stands for the Village People, and the Zenith is a
18 huge concert hall in France, in Paris, holding 8,000 people
19 approximately.

20 MR. BESSER: I have one further exhibit that I'll pass
21 out, your Honor.

22 Q. I've just handed you Exhibit 59.

23 A. Yes.

24 Q. Do you recognize it?

25 A. I do.

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J. Belolo - Direct - Besser

1 Q. What is it?

2 A. Those are a series of bills, invoices, I believe, I think,
3 from Mr.-- an attorney called Mr. Briggs, Jeffry Briggs.

4 Q. Do you know why -- strike that. I'll rephrase.

5 Are these invoices from your corporate records at
6 Can't Stop?

7 A. They are.

8 Q. Do you know why Mr.-- why Can't Stop has copies of invoices
9 from Mr. Briggs?

10 A. It's because we -- Can't Stop covered Mr. Briggs' expenses,
11 services for a few months.

12 Q. And what -- in what regard was Mr. Briggs rendering
13 services?

14 A. So Mr. Briggs was Sixuvus' attorney, and he was helping
15 them defend themselves during the trial involving Mr. Willis in
16 which we were parties, as well. And I believe Sixuvus were
17 having financial difficulties at the time. They asked us for a
18 loan, and apparently we didn't do the loan. We decided to pay
19 out the invoices directly.

20 Q. Do you have any idea -- strike that.

21 MR. BESSER: I offer 59 into evidence.

22 THE COURT: Received.

23 (Plaintiff's Exhibit 59 received in evidence)

24 Q. Do you know approximately what the total of invoices were?

25 A. More than \$100,000, 120.

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J. Belolo - Direct - Besser

1 Q. There was a reference in earlier testimony about a
2 mega-mix. Do you recall that?

3 A. Yes, I do.

4 Q. Do you know what the mega-mix is?

5 A. The mega-mix is a recording that was produced and released
6 by Scorpio and Can't Stop and other licensees in '89, '90.

7 Q. That's 1989 or 1990?

8 A. Yes. And we saw it earlier as a video -- we saw a video
9 clip of that record earlier.

10 Q. The video we saw when you testified a few days ago was a
11 video made for what purpose?

12 A. It was a video made to promote the mega-mix record and to
13 be broadcast on TV and used to help the release of the record
14 in Europe and the U.S.

15 Q. And what exactly is a mega-mix?

16 A. A mega-mix is a mash-up of -- it was -- it was something
17 that was really fashionable in the '80s and '90s, but it's when
18 you take a few songs, in particular in this case, the four or
19 five hits of the Village People and you reproduce -- you remix
20 them and putting them together, changing the arrangements, the
21 production values of the music, but keeping the vocals.

22 It's just a way to relaunch the career of the Village
23 People and to promote the songs and put them out there again in
24 '89. It was quite successful.

25 Q. Now, there was some testimony earlier, I believe, from

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J. Belolo - Direct - Besser

1 Mr. Simpson dealing with the termination notice that you sent?

2 A. Yes.

3 Q. And by that, you understand, I mean, the termination of the
4 Sixuvus license?

5 A. Absolutely.

6 Q. Can you tell us the date progression of the events around
7 that termination.

8 A. Yes, I can as I recall it. I first called Mrs. Deborah
9 Crawford on the phone. We spoke for about half an hour, 45
10 minutes to let her know --

11 Q. What did you tell her in that conversation?

12 A. I told her that we'd be sending an e-mail later on to
13 terminate the license, and I tried to explain the reasons why,
14 and let her know what was coming. And I later sent the e-mail
15 that's in the evidence, I think, the next day or later that
16 day.

17 Q. Before you sent the e-mail or talked to Mrs. Crawford, was
18 there any attempt by you to obtain any of the social media
19 sites of Village People?

20 A. No.

21 Q. So when Mr. Simpson put that as prior to that -- happening
22 prior to that, he's incorrect?

23 A. He's incorrect.

24 MR. ADELMAN: Objection.

25 THE COURT: Overruled.

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J. Belolo - Direct - Besser

1 MR. ADELMAN: That's not the testimony.

2 THE COURT: Well, I don't remember exactly. The
3 record will reflect what the testimony was.

4 This witness is saying he and plaintiff did nothing to
5 attempt to get control of the social media sites before those
6 conversations.

7 MR. ADELMAN: I was objecting to Mr. Besser's
8 question, actually, not the respondent's answer, as testimony.

9 THE COURT: If Mr. Simpson didn't put it that way, the
10 record will reflect. I don't remember one way or the other.

11 MR. ADELMAN: Thank you.

12 MR. BESSER: May I have a moment to consult. I'm
13 almost done.

14 THE COURT: Yes.

15 (Pause)

16 BY MR. BESSER:

17 Q. I return very briefly, sir, to the legal fees that you
18 paid -- that Can't Stop paid for Mr. Briggs.

19 A. Yes.

20 Q. Just so it's clear on the record, what case was that?

21 A. I believe it was the case which we discussed earlier.

22 THE COURT: The one in San Diego?

23 THE WITNESS: The one in San Diego, yes, involving
24 Sixuvus against Mr. Willis and ourselves as well against
25 Mr. Willis in a counterclaim.

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J. Belolo - Direct - Besser

1 Q. Mr. Willis had counterclaimed against Can't Stop?

2 A. Yes, he did. He had.

3 Q. He had also counterclaimed, hadn't he, against other
4 entities that Can't Stop had done business with?

5 A. Yes, absolutely. Yes, he counterclaimed against some of
6 our licensees for the trademark - all of them, basically - all
7 the major ones. Hallmark was a licensee in particular for
8 greeting cards; it was doing very well. WMS Gaming. About
9 half a dozen licensees were mentioned and sued in the
10 counterclaim.

11 Q. And Can't Stop defended those licensees?

12 A. Yes, we defended our licensees.

13 Q. But then you also helped Sixuvus with their legal fees?

14 A. We helped Sixuvus extensively with legal fees and advice in
15 general.

16 Q. Now, as my final exhibit, I have only one of these.

17 THE COURT: It's now Plaintiff Exhibit 60.

18 MR. BESSER: I'll let the witness describe what it is,
19 and I will represent to the Court that my grandkids would love
20 to have this at this moment.

21 THE COURT: What child wouldn't want a YMCA tour bus?

22 A. Yes, yes. My daughter drives me crazy with one of these.

23 It's -- so it's a toy that was released in 2005. It's
24 a license that we gave to a manufacturer. I think it was
25 released in the U.S. and Europe, at least, and perhaps Asia, as

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J. Belolo - Cross - Willis

1 well.

2 As I recall, it did fairly well. It wasn't a huge
3 success, but it was -- it sold quite a bit. And it features
4 the music also a bunch of sounds, the truck moves on its own.
5 In particular, it depicts the concept of the Village People as
6 well, not with the pictures at that point, because in 2005, we
7 hadn't started the revamped merchandising program yet, but you
8 can see different characters, and they're doing the YMCA.

9 MR. BESSER: I'll offer 60 into evidence.

10 MR. ADELMAN: No objection.

11 THE COURT: It's received.

12 (Plaintiff's Exhibit 60 received in evidence)

13 MR. ADELMAN: Can I take a picture of it, your Honor?

14 THE WITNESS: Sure.

15 THE COURT: Yes. Anybody who wants it for the record,
16 unless you want to send it up to the Court of Appeals some day,
17 you'll probably want to put it in something that can be part of
18 the record, photographed or something.

19 MR. BESSER: Thank you.

20 Nothing further of this witness.

21 THE COURT: Ms. Willis.

22 CROSS-EXAMINATION

23 BY MS. WILLIS:

24 Q. Good afternoon, Mr. Belolo.

25 A. Good afternoon.

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J. Belolo - Cross - Willis

1 Q. I'd like to bring your attention back to Exhibit 59.

2 A. Yes.

3 Q. Is it my understanding that Can't Stop funded up to
4 \$100,000 to the Sixxvus' defense?

5 A. When you add up all those bills, it's in excess of
6 \$100,000; yes.

7 Q. And would Can't Stop spend that type of money on a group
8 that it was not involved with or heavily involved with?

9 A. No.

10 Q. Thank you. Mr. Belolo, does Can't Stop have quality
11 control standards?

12 A. Yes, we do.

13 Q. What are, like, some of Can't Stop's quality control
14 standards and would it include, for example, the six Village
15 People characters and the music, for example?

16 A. Well, we -- Can't Stop owns different interests all
17 pertaining to Village People concept. There's the publishing
18 of the musical compositions, the recordings, the trademark, the
19 character concept, as well.

20 And we try to keep an eye on every use of either of
21 these rights, either through our licensees or in general
22 outside by using external companies, such as the Web Sheriff
23 and other sub-publishers, in particular and directly ourselves,
24 as well, and through Scorpio Music, the other company involved
25 in which I am director, where there are employers specifically

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1 for that purpose.

2 So we monitor -- yeah, we monitor what's going on, and
3 we try to make sure that the Village People brand is used in a
4 correct way.

5 Q. And would that, in particular, include the Sixxvus live
6 performances?

7 A. Yes, sure.

8 Q. Did Can't Stop communicate the standards to the Sixxvus at
9 some point, I'm sure, or did they not?

10 A. I'm pretty sure there was communication -- well, yes, I'm
11 sure there was discussion over the quality of what -- in
12 general, we were very happy with Sixxvus' performances, if
13 we're talking about this in particular, about Sixxvus. And
14 there was discussion ongoing around how they perform and we
15 thought they were doing a great job.

16 Q. And I talked about earlier with another witness that, you
17 know, in today's world, you no longer, although the evidence
18 shows that Mr. Belolo appeared at some of the concerts, I think
19 I saw some exhibits with that, but it's no longer necessary to
20 actually show up at concerts.

21 So the question I have for you is, isn't it true that
22 one of Can't Stop's quality control methods was to constantly
23 review YouTube and other videos with respect to the Sixxvus
24 live performances?

25 MR. ADELMAN: Objection to form.

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J. Belolo - Cross - Willis

1 THE COURT: Was it part of your quality control to
2 review videos online?

3 THE WITNESS: Yes, your Honor, it is. It is.

4 BY MS. WILLIS:

5 Q. And how often did you do this?

6 A. Regularly, on a regular basis, either us directly, Scorpio
7 Music, sub-publishers or the different companies we hired
8 constantly would monitor what was out there.

9 Q. And so, Can't Stop was able to use the current methods into
10 the 21st Century, and that is reviewing the Sixxvus
11 performances, is that correct? They could see them any time
12 they wanted to? For example -- let me rephrase that.

13 If Can't Stop wanted to check out a particular
14 performance of Village People, could they simply go to the
15 Internet to do so to see --

16 A. Sure.

17 Q. And did they?

18 A. Yes.

19 Q. And if Can't Stop had noticed something wrong or something
20 askew with the Sixxvus performances by way of their costume or
21 other quality control methods, would Can't Stop have not told
22 them so?

23 A. Absolutely. I know my father and myself for sure are very
24 involved with the brand the Village People. It's a part of our
25 DNA, who we are, and we care a lot. So if we had felt it was

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1 going the wrong way, would have said so very, very clearly.

2 Q. And is it fair to say that over the years you have reviewed
3 at least maybe 100 or more or less than 100 of those videos?

4 A. Over the years, yeah, it would be fair.

5 Q. Hundreds. On an ongoing basis?

6 A. I don't know a particular number, but it was constant.

7 Q. It was constant?

8 A. Yes.

9 Q. So that was -- an important part of your quality control
10 was to review those videos?

11 A. Absolutely, among others.

12 MS. WILLIS: That's all.

13 MR. ADELMAN: I was wondering, because my throat is
14 starting to go, I would like to take, if your Honor -- our
15 lunch break so I can repair my throat, and I can continue to
16 cross-examination of the witness.

17 THE COURT: All right.

18 MR. ADELMAN: If that would work for your Honor.

19 THE COURT: We'll finish Mr. Belolo.

20 And Ms. Willis, your witness will be here this
21 afternoon.

22 MS. WILLIS: I don't think it's necessary to call my
23 witness at all.

24 THE COURT: So we're definitely finishing after lunch.

25 MR. ADELMAN: Yes.

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J. Belolo - Cross - Willis

1 MS. WILLIS: I will be calling -- I'm sorry. I'm
2 recalling a couple of witnesses here, but my direct witness is
3 not going to be necessary.

4 THE COURT: Who are you planning to recall?

5 MS. WILLIS: As I stated yesterday, I plan to recall
6 Mr. Raymond Simpson, and I also plan to recall Felipe Rose.

7 THE COURT: And how long do you expect your direct of
8 those witnesses to take?

9 MS. WILLIS: I won't do like they did. I will make it
10 rather quick, your know. It will go quite smoothly and
11 everything.

12 Also, your Honor, I have on my part of the case, I was
13 planning to call Mr. Belolo on one question only. Now, your
14 Honor could have me just to do it with him when we come back,
15 and that way, it's over. It will take less than a minute.

16 THE COURT: That's fine.

17 MS. WILLIS: Okay. Good.

18 THE COURT: All right. So let us break until 2:00,
19 and then we'll finish.

20 (Luncheon recess)

21

22

23

24

25

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J. Belolo - Cross - Willis

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:04 p.m.

3 (In open court)

4 THE COURT: All right. We had one more question from
5 Ms. Willis for Mr. Belolo.

6 JONATHAN BELOLO,

7 CROSS-EXAMINATION CONTINUED

8 BY MS. WILLIS:

9 Q. Good afternoon, Mr. Belolo.

10 A. Good afternoon.

11 Q. In prior testimony here before the Court, I'm sure you'll
12 recall the defendants attempting to say that Village People
13 featuring Victor Willis is somehow subpar to the Sixxvus and
14 that he had walked off of the stage and all that.

15 Do you recall that type of testimony?

16 A. I recall the subject was broached; yes.

17 Q. And you're familiar with Victor Willis, aren't you?

18 A. Yes, I am.

19 Q. You know him to be, what, a professional artist or do you
20 not?

21 A. He's a professional performer.

22 Q. And have you heard him sing live, for example, in front of
23 you?

24 A. Yes, I have recently.

25 Q. And what was your impression?

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1 A. That his voice was back and almost as good as 40 years ago.

2 Q. Thank you. So I'd like to show a video that we're going to
3 enter into evidence.

4 MS. WILLIS: We're going to say this is Exhibit 25, I
5 suppose, your Honor.

6 THE COURT: Intervenor's 25?

7 MS. WILLIS: Uh-huh.

8 THE COURT: All right.

9 MS. WILLIS: Can the witness have permission to come
10 over and start it?

11 THE WITNESS: I'm also tech support.

12 MS. WILLIS: He's our tech person, too.

13 THE COURT: You may step down.

14 MS. WILLIS: Bring the lights down a bit and probably
15 the screen over.

16 MS. MATZ: Your Honor, we ask we be given a copy of
17 this at some point.

18 THE COURT: Yes.

19 Make sure you give everybody else a copy, and if you
20 want it to be in the record, you need to give it to me on desk.

21 MS. WILLIS: Great.

22 For the record, what we're about to see are
23 performances, live performances of Victor -- it's Village
24 People featuring Victor Willis in Australia, and also a couple
25 of locations here, but 90% of it is the reaction from the

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J. Belolo - Cross - Willis

1 Australia tour.

2 THE COURT: What are the dates of this, just recently?

3 MS. WILLIS: The dates are December 7, I believe,
4 through the 17th, somewhere around there, approximately.

5 (Video played)

6 THE COURT: If I didn't say it, Intervenor's 25 is
7 received.

8 (Intervenor Exhibit 25 received in evidence)

9 MS. WILLIS: Thank you, your Honor.

10 BY MS. WILLIS:

11 Q. So is that your knowledge of what actually occurred in
12 Australia?

13 A. This is a video that you sent me around that time that let
14 me see, among others, what would happen then; yes.

15 Q. Okay. Good. And you know that during one performance in
16 Australia when Victor Willis arrived, he arrived with a very
17 bad cold. You're familiar with that?

18 A. I heard the stories.

19 Q. And you also know that he was able to do the first show but
20 halfway through, he lost his voice because of the cold?

21 THE COURT: Is this anything that you know yourself or
22 did you hear from a third person?

23 THE WITNESS: I read it online, news stories, reports,
24 stuff like that.

25 Q. And did you also hear that people I guess associated with

180206can'tstopH3 J. Belolo - Cross - Adelman

1 the Sixuvus sort of took -- they started saying, oh, Victor
2 Willis walked off the stage? You heard about that? You heard
3 that part? Oh, he walked off the stage?

4 MR. ADELMAN: She wants to testify, she is free --

5 MS. WILLIS: I'm not testifying.

6 THE COURT: So far, I haven't heard anything from
7 anyone with any personal knowledge on this subject. And
8 frankly, I'm not sure, as I think I've said before, whether it
9 matters whether Victor Willis' group is good or bad or better
10 or worse than the defendant's group or why. It's not really
11 relevant to the issues in this hearing.

12 And this hearing is not supposed to be an opportunity
13 to settle any score anybody has with anybody else. It's
14 supposed to be about whether the counterclaims that Sixuvus has
15 brought against Can't Stop are going to fly, and whether Victor
16 Willis lost his voice or not I'm having a hard time imagining
17 how that is going to affect the outcome.

18 MS. WILLIS: Well said. Thank you. No more for
19 Mr. Belolo.

20 Thank you.

21 THE COURT: Mr. Adelman.

22 MR. ADELMAN: Thank you.

23 CROSS-EXAMINATION

24 BY MR. ADELMAN:

25 Q. Good afternoon, Mr. Belolo.

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1 A. Good afternoon, Mr. Adelman.

2 Q. As you can tell, my voice has morphed significantly since
3 we last chatted. So if you don't understand something I say,
4 please ask me to repeat it, and I will.

5 A. Thank you.

6 THE COURT: I hope it's just a cold and not the flu,
7 Mr. Adelman.

8 MR. ADELMAN: I don't even think it's a cold, your
9 Honor, because I don't have any other symptoms on than my voice
10 sounding like Marlon Brando.

11 THE COURT: Good. I'd hate to have you spreading flu
12 germs around.

13 MR. ADELMAN: No. I would have called you and
14 suggested another day.

15 THE COURT: I'm glad for your sake it's not the flu.

16 MR. ADELMAN: Thank you. I know. Thank you, your
17 Honor.

18 Q. So tell me, Mr. Belolo, what's the last show that the
19 Sixuvus -- withdrawn.

20 Where did the Sixuvus perform last?

21 A. I don't know the specific place or date where they last
22 performed.

23 Q. Okay.

24 A. I don't recall, anyway.

25 Q. Do you recall any show that they performed in the last two

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J. Belolo - Cross - Adelman

1 years?

2 A. Yeah. Sure.

3 Q. Okay. Where?

4 A. Well, they performed in Amsterdam. The video I introduced
5 in the evidence, in these proceedings, they performed in Ibiza.
6 They tour extensively in the U.S. They came to France.

7 Q. And when is the last video you reviewed on YouTube of the
8 Sixuvus?

9 A. Must have been during the summer of 2017.

10 Q. Okay. When you do a Google search of Village People --

11 A. Yes.

12 Q. -- do a lot of videos of the Sixuvus Village People shows
13 come up?

14 A. Google searches change all the time. They have a very
15 complex algorithm, but it comes up.

16 Q. I understand, but it was suggested earlier if you wanted to
17 see any show, you could just find it on Google.

18 Do you believe that's the case?

19 A. Well, you can find it on YouTube, which is a part of
20 Google, I guess. And not any show. A lot of shows are there,
21 but not all of them.

22 Q. Isn't it true that most of the shows put up by fans of
23 the Sixuvus on YouTube have been taken down because of -- do
24 you know why?

25 A. We do take down some shows from time to time.

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J. Belolo - Cross - Adelman

1 Q. Not you, but there have been take-down notices by the
2 Willises --

3 A. Yes.

4 Q. -- quite consistently since you ended the lawsuit; isn't
5 that true?

6 A. I don't remember take-down specifically after. It's
7 possible. But I've noticed that Mrs. Willis does take down
8 some videos often -- from time to time, anyway.

9 Q. Why does she have the ability to take down videos off
10 YouTube?

11 A. At least as a sub-publisher -- as a publisher of some of
12 the songs, she may have -- she may have the right. I don't
13 really participate in that. I don't know very much how she
14 does it.

15 Q. But to your knowledge, it has to do with her rights in sync
16 licensing, correct?

17 A. It has to do with music publishing.

18 Q. But the term of art of syncing music with video is called
19 sync licensing; is that not correct?

20 A. It's true.

21 Q. And are you aware the Digital Millennium Copyright Act?

22 A. I've heard of it.

23 Q. Okay. Tell me what it is, if you know?

24 A. Well, the DMCA is one of the major acts that was passed in
25 the United States that set the rules to enforce copyright

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1 protection online.

2 Q. Right. It gives the copyright owners of music the right to
3 tell YouTube to take down a video that syncs a video with their
4 music without their permission, correct?

5 A. It's one of the uses; yes, correct.

6 Q. And so, have you -- as one of the publishers of the Village
7 People music, have you granted anyone permission on YouTube to
8 put up a synchronized video?

9 A. On YouTube specifically, may have happened. We would --
10 but we do grant syncs all the time.

11 Q. Okay. Have you ever granted Sixxvus the right to put up
12 videos on YouTube?

13 A. It's possible.

14 Q. Okay. Would you have to get the Willises' permission to
15 allow Sixxvus to put up videos on YouTube?

16 A. It's a complex question. I don't think I would, but it's
17 complicated. Depends on the territory. Nowadays -- yeah.

18 Q. If you wanted to do a commercial like the Let's Go
19 commercial we discussed --

20 A. Yes.

21 Q. -- would you have to get the Willis' permission to use YMCA
22 in the "Let Go" commercial?

23 MR. BESSER: I object. He's testing his legal
24 knowledge. These are very difficult legal issues, and I don't
25 know that they're relevant.

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J. Belolo - Cross - Adelman

1 MR. ADELMAN: They're actually not, your Honor. This
2 is exactly what publishers do. This is exactly what Can't Stop
3 and Scorpio Music are set up to do. And Mr. Belolo said he's
4 intimately involved in the business of the music.

5 THE COURT: You can ask him what he does. Whether
6 it's permitted or not under the DMCA is a legal question, but
7 you can ask him what they do.

8 MR. ADELMAN: I didn't ask him that point. This
9 question was specifically about whether he needed to get
10 permission from the Willises to put music in a commercial.

11 THE WITNESS: Okay.

12 MR. ADELMAN: And he would know that.

13 THE WITNESS: I can answer, if you want.

14 Q. Of course.

15 A. My understanding of it personally, and I'm not an expert,
16 is that in the U.S., any publisher has the right to grant a
17 sync license without asking the other sub-publishers, but they
18 have to account their share to everybody else, but that's not
19 our practice.

20 What we do is, we make sure Mr. Willis' publishing
21 company agrees and signs every license in the U.S., as well as
22 we do, just to make sure everybody's on the same page.

23 Q. So you do ask for that permission?

24 A. Well, we don't -- we don't, but the person who wants the
25 sync does.

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J. Belolo - Cross - Adelman

1 Q. Did you grant permission to "Let Go" to use music in that
2 commercial?

3 A. I don't believe we did.

4 Q. Was that because the Willises refused to grant permission?

5 MS. WILLIS: Objection as to form. It's irrelevant as
6 to whether or not the Willises granted a license or not.

7 MR. ADELMAN: Actually, it is. They tried to use the
8 "Let Go" commercial as an example --

9 THE COURT: Overruled.

10 MR. ADELMAN: Thank you, your Honor.

11 A. I understand the Willises did not allow this commercial.

12 Q. Okay. The commercial aired anyway, didn't it?

13 A. Without the music.

14 Q. That's correct. And Sixuvus was in the commercial,
15 correct?

16 A. Yes, they were.

17 Q. They used different type of disco music in the commercial?

18 A. Yes. There was a disco background, I guess.

19 Q. Okay. Thank you. If we can turn to Exhibit 30 -- PX37,
20 please.

21 A. It's your set? PX37.

22 Q. You testified about this document earlier, do you recall?

23 A. I did.

24 Q. The first page is a letter from David Fischhoff to your
25 father, correct?

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J. Belolo - Cross - Adelman

1 A. Correct.

2 Q. Okay. And it's the outline of a license, correct?

3 A. Appears to be, yeah. It's not the outline, but with
4 regards to the license.

5 Q. The license for performance?

6 THE COURT: It looks like a proposal.

7 MR. ADELMAN: Yeah, it's a proposal. I'm sorry. Did
8 I say something --

9 THE WITNESS: I said --

10 Q. It is a proposal. Yes. Turning to page 3. This is a
11 letter from your father to Stephen Kopitko?

12 A. Uh-huh.

13 Q. In the first -- after it says, "Dear Stephen," it says,
14 Please find a copy of contract between Can't Stop Productions
15 and David Fischhoff Productions, Inc. for the service mark and
16 trademark Village People.

17 Can you tell me where in this exhibit is the actual
18 contract?

19 A. The contract is not in the exhibit.

20 Q. Now, did you do the search for this document?

21 A. This document in particular was extracted by my father.

22 Q. Okay. Did anybody ask him for the actual contract?

23 A. I -- I don't know if anybody asked him. I know that he's
24 thorough and he wants to check his records.

25 Q. But there is no contract attached to this exhibit; correct?

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J. Belolo - Cross - Adelman

1 A. There is no contract. I'm pretty sure we can find it.

2 Q. You're assuming there is a contract?

3 A. I'm assuming there's a contract.

4 Q. Have you ever seen this contract?

5 A. I've seen many contracts. It's -- I think I may have seen
6 it -- I don't know if it was the contract or a draft.

7 Q. Isn't it true that it's probable that this contract was
8 never entered into?

9 A. No. I'm sure it was entered into.

10 Q. But you've never seen it, but you don't have a copy of it?

11 A. Well, it's from '87, so...

12 Q. If you look at paragraph 4 of this document --

13 A. Which page? Pardon?

14 Q. Same page.

15 A. Yep.

16 Q. Actually, you know what? Turning to the next page, which
17 is page 3, --

18 A. Uh-huh.

19 Q. -- it's a letter from Felipe Rose?

20 A. Yes.

21 Q. To your father, correct?

22 A. Correct.

23 Q. And did you -- prior to getting on the stand today or on
24 the stand, did you read the letter?

25 A. Yes.

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J. Belolo - Cross - Adelman

1 Q. And what is your understanding of what this letter is?

2 A. Well, my understanding is that when Sixuvus decided to
3 separate from David Fischhoff services, they needed proof that
4 we had granted them a license and that's what Felipe is asking
5 Henri.

6 Q. And that's because all they had at the moment was an oral
7 agreement with your father, correct?

8 A. Probably, yes.

9 Q. Okay. And in any of these agreements that we've been
10 looking at right now, are there any quality control provisions
11 in any of the agreements that we've been looking at?

12 A. We haven't seen agreements here.

13 Q. That's right. In any of these proposals or discussions in
14 these letters, are there any quality control demands or
15 provisions?

16 A. It's not the essence of the letter, so I don't think there
17 are.

18 Q. Now, if you go to the last page, this is a letter from your
19 father again to Steve Kopitko.

20 A. Uh-huh.

21 Q. It says: Dear Steve, please find enclosed a letter from
22 Village People Company. They want Can't Stop to license to
23 them use of the Village People name for touring against the
24 royalty of 5% on gross income for Can't Stop.

25 Next sentence: It's okay with me.

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J. Belolo - Cross - Adelman

1 A. Uh-huh.

2 Q. Okay. Then he says: Can you please contact Felipe Rose
3 and work with him, a letter of agreement for a period of 18
4 months...

5 A. Yes.

6 Q. ...we will see for extension afterwards.

7 A. Yep.

8 Q. And that's dated January 1990, correct?

9 A. That's correct.

10 Q. Okay. So, was -- did they ever enter into a written
11 agreement?

12 A. No.

13 Q. Did Steve Kopitko ever draft an agreement for them?

14 A. He drafted an agreement.

15 Q. He did? What happened to it?

16 A. There was back and forth discussion around the draft, but
17 it never got signed.

18 Q. And what happened after 18 months? Did Can't Stop renew
19 the agreement, or did they just let it go?

20 A. No. Well, it was implicitly renewed. My father agreed
21 with them continuing to tour.

22 Q. Was there any documentation or e-mails or a letter from
23 Steve Kopitko saying, hey, it's 18 months, you're good to go?
24 Anything like that?

25 A. Not on the record today. Maybe there is in the documents,

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J. Belolo - Cross - Adelman

1 but we could --

2 Q. And this went on for the next 27 years, correct?

3 A. Yes.

4 Q. No -- nothing from Can't Stop?

5 A. Well, nothing from Can't Stop. Is it a question?

6 Q. Yeah. Was there anything from Can't Stop that gave any
7 indication that this license wasn't anything but what my
8 clients have been saying it is?

9 A. Yes. Of course we signed one of the evidence, in one of
10 the e-mails that my father -- we confirmed to Mitch, I think it
11 was Mitch, that they could continue touring as long as Can't
12 Stop allowed it, so that's at least one example.

13 Q. Okay. Let's turn to Exhibit 39.

14 A. I got it.

15 Q. Okay. So this is a letter from Mitch Weiss to Steve
16 Kopitko, correct?

17 A. Yes.

18 Q. And basically, this is a letter -- is it your testimony
19 that it's during the negotiation of the license agreement?

20 A. Seems to be.

21 Q. Okay. And my clients are asking for certain things,
22 correct?

23 A. Correct.

24 Q. Okay. But no written agreement was ever signed, correct?

25 A. Not to my knowledge.

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J. Belolo - Cross - Adelman

1 Q. In this letter, it talks about merchandise, doesn't it?

2 A. It's possible. Probably.

3 Q. Just take a look at the letter and tell me if it talks
4 about merchandise.

5 A. The first one?

6 Q. The one we're talking about, 39.

7 A. There's two letters. I'm going to read it.

8 Q. You're correct. That's correct, sir. From Mr. Weiss to
9 Mr. Kopitko.

10 (Pause)

11 A. Yes. Well, clause one is they asked for the right to
12 negotiate and exploit a deal for merchandise.

13 Q. And if you turn back to Exhibit 37 for a second, if you can
14 keep them both up there, this proposal also asks for
15 merchandising records and live video, movies, a whole gamut of
16 things; correct?

17 A. Yes.

18 Q. So in the letter at the time that Sixxvix was negotiating
19 with Can't Stop, they were looking for a breadth of rights,
20 weren't they?

21 A. Yes.

22 Q. Because they only had a singular right at the time,
23 correct?

24 A. The main right they had was a right to tour. We also
25 granted them -- I'm pretty sure we granted them the right to

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1 sell merchandise on the tour.

2 Q. I'm sorry. You granted them the right to sell merchandise?

3 A. On the tour, I'm pretty sure. I'm not sure it's in
4 writing, but --

5 Q. Okay. If you can turn to page 48.

6 A. Exhibit 48?

7 Q. Yes, sorry, Exhibit 48. Thank you. You're getting better
8 than me at this.

9 A. Practice. Yes?

10 Q. Yes.

11 A. Uh-huh.

12 Q. This is a purported to be an e-mail from Sixuvus to
13 somebody named Alex at RIP Productions?

14 A. Absolutely.

15 Q. And they're telling them you can't talk to us about plays,
16 musicals; right?

17 A. That's what they're saying.

18 Q. That is consistent with their license, right?

19 A. Yes.

20 Q. They would refer anything other than that had to do with
21 touring to you, correct?

22 A. Yes.

23 Q. Okay. So they acted in accordance with what they believe
24 the license was, correct?

25 A. Correct.

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J. Belolo - Cross - Adelman

1 Q. That's what that e-mail is actually showing?

2 A. That, and they also talk about trademark, but that's --
3 yes, they're referring the producer to us for the rights to do
4 a musical, as they should have.

5 Q. When did the lawsuit between Can't Stop and Victor Willis
6 begin?

7 A. There were more than one.

8 Q. Okay. When did the first one begin?

9 A. The first one that I know of was in 1990.

10 Q. Okay. Right around the same time that you're negotiating
11 with Sixuvus, correct?

12 A. Correct.

13 Q. And what was that lawsuit about?

14 A. This one, if I recall correctly, it was about -- I think
15 Victor Willis was complaining about the use of his voice on the
16 mega-mix. I think that was the subject of his complaint, in
17 France, anyway. It was a French case.

18 Q. Okay. And when did that lawsuit end?

19 A. Not too long thereafter. I think a couple -- one or two
20 years later.

21 Q. Okay. Was Sixuvus sued in that lawsuit?

22 A. I don't know. I don't think so.

23 Q. When is the next time Victor Willis and Can't Stop were in
24 a lawsuit?

25 A. Well, the one -- next time that strikes me is the one we've

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1 been talking about in 2010.

2 Q. And who was the plaintiff in that suit?

3 A. Honestly, I don't recall the details, if the plaintiff
4 countersued -- it was complicated.

5 Q. Do you know who sued who first?

6 A. I don't remember who sued who first.

7 Q. Okay. Did they sue Sixuvus along with you?

8 A. We were brought into this as a counterclaim against us, I
9 believe.

10 Q. Was Sixuvus already sued in the lawsuit?

11 A. Probably, yes. That would make sense.

12 Q. What was Sixuvus sued for?

13 A. I don't remember the details of the case. I haven't read
14 it recently.

15 Q. I'm asking you because you made a big deal about the legal
16 fees in that case --

17 A. Yes.

18 Q. -- and how you paid Sixuvus legal fees.

19 A. Yes.

20 Q. But you don't even know what they were being sued for?

21 A. I know there were lots of details in the lawsuit. I didn't
22 take part of it myself. I wasn't involved then. My father
23 would know instantly what you're talking about. I haven't read
24 it in a long time.

25 Q. Fair enough. What was Victor Willis suing Can't Stop for?

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1 A. He was suing Can't Stop on the subject of our use of
2 re-records we have done of the music and that we licensed to
3 some of our licensees.

4 Q. Okay. And was that the lawsuit that was just recently
5 settled last year?

6 A. No, it wasn't.

7 Q. Okay. So, did -- what happened with that lawsuit? Did you
8 settle it?

9 A. The one in 2010?

10 Q. The one you're talking about right now.

11 A. Yes. We settled it.

12 Q. Did you pay Victor Willis money?

13 A. I believe we did.

14 Q. Okay. Did Sixuvus pay Victor Willis any money in that same
15 lawsuit?

16 A. I don't recall.

17 Q. Isn't it true that in actuality, the settlement was that an
18 injunction was part of the settlement in which Victor Willis
19 was supposed to stay away from Sixuvus?

20 MS. WILLIS: Objection.

21 Q. Was that not the settlement, sir?

22 THE COURT: Overruled.

23 MR. BESSER: If I may, the settlement the record was
24 on the record, defendant's introduced it, I believe as their
25 Exhibit X --

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J. Belolo - Cross - Adelman

1 THE COURT: I can't even tell if we're talking about
2 the same lawsuit.

3 MR. BESSER: It is.

4 THE COURT: Well, the witness can answer if it's part
5 of his understanding.

6 Was an injunction that Mr. Willis not interfere with
7 any of Sixuvus' performances part of the settlement that you
8 know of?

9 THE WITNESS: I believe there was an injunction in
10 there. I don't know if the term was "injunction," but part of
11 the proceeding was that there was something in that nature;
12 yes.

13 BY MR. ADELMAN:

14 Q. So isn't it the case that you actually paid for Sixuvus
15 legal fees because you didn't believe that the lawsuit against
16 them was meritorious and that they had only been sued because
17 of Can't Stop?

18 A. No, I don't think so.

19 Q. Okay. Thank you.

20 If you can turn to Exhibit 53.

21 THE COURT: 53?

22 MR. ADELMAN: 53.

23 Q. This is about the press representation letter. Do you
24 recall testifying about it?

25 A. I recall this document.

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J. Belolo - Cross - Adelman

1 Q. Okay. Now, did Sixuvus ask Can't Stop to pay for half of
2 the press representative or did your father offer to?

3 A. In this e-mail, we can see that it's Mitch who is asking.

4 THE COURT: Mitch is saying -- he's writing about your
5 kind offer to help with the press rep. costs.

6 Do you know firsthand anything about these
7 conversations?

8 THE WITNESS: I don't know firsthand. My father was
9 the one who had the conversation.

10 Q. Okay. Let's turn to Exhibit 50, if you'll turn to the
11 second page. If I understand your testimony correctly, Can't
12 Stop approved this picture?

13 A. Yes.

14 Q. And it approved all the detail around the picture?

15 A. It approved the picture as a whole.

16 Q. Yes. And this picture was meant to be a poster, correct?

17 A. It was meant -- my understanding was that it was meant to
18 be a lot of things, poster probably, as well.

19 Q. What other things would it have meant to be?

20 A. A leaflet to promote the tour, for instance.

21 Q. Anything else?

22 A. You'd have to ask Sixuvus with that.

23 Q. Okay. Now, take a look at this poster/picture and tell me
24 where Can't Stop's name is on it.

25 A. Not on this page that we're seeing here.

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J. Belolo - Cross - Adelman

1 Q. Right. This is the poster, though, correct?

2 A. I don't know if it's a poster, but it's what it is, the
3 document with the picture and the trademark.

4 Q. And look at the bottom-right corner. It says "R" in a
5 circle Village People?

6 A. Yes.

7 Q. Do you know what "R" in a circle means?

8 A. It's a registered trademark.

9 Q. Okay. Does it say registered Can't Stop?

10 A. No, not on the front page, not on this page.

11 Q. And approved by your company, Can't Stop, correct?

12 A. Yes, apparently.

13 Q. Okay. Thank you. You just ended a lawsuit with Victor
14 Willis, correct?

15 A. Correct. A year ago.

16 Q. And when did you end that lawsuit?

17 A. Pardon?

18 Q. When did that lawsuit end?

19 A. It ended by a settlement at the beginning of 2017 in March,
20 I think.

21 Q. At what stage of litigation, if you know, was the case in?

22 A. There were multiple cases. There was a case in the U.S.
23 that was pending an appeal or that had just been oral arguments
24 on appeal, and there was a case in France, as well --

25 Q. Okay.

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J. Belolo - Cross - Adelman

1 A. -- that hadn't started really; yes.

2 Q. Had there been a ruling in the case in the United States?

3 A. Yes.

4 Q. And what was the ruling?

5 A. It was a case regarding the recapture rights of Victor
6 Willis, and then it evolved into what percentages could
7 Mr. Willis recapture. And there was a ruling in San Diego that
8 split the songs. There were 24-something songs involved. And
9 some of them, half about, were ruled 50/50, would attribute 50%
10 of the copyright to Mr. Willis in the U.S., and the other half
11 at one-third.

12 Q. And did the Court grant the Willises any money?

13 A. There was lawyers' fees.

14 Q. Other than lawyers' fees, did it grant any back-royalties?

15 A. Not significantly. As I recall, I might be wrong, but I
16 don't think so.

17 Q. So it granted Mr. Willis a bigger percentage in a number of
18 the songs?

19 A. Yes.

20 Q. And it granted them attorneys' fees, correct?

21 A. Yes, correct.

22 Q. Was that case -- was that appealed?

23 A. It was appealed.

24 Q. Who appealed it?

25 A. Both parties appealed it.

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J. Belolo - Cross - Adelman

1 Q. Okay. Now, what was the settlement then? You settled
2 before -- withdrawn.

3 You settled before the appeal was decided, correct?

4 A. Before it was decided, yes. There were -- there had been
5 oral arguments, I think, but yes, it was before it was decided.

6 Q. So what was the settlement?

7 MS. WILLIS: Objection, your Honor. The settlement is
8 confidential, and I fail to see the relevance here.

9 THE COURT: What's the relevance?

10 MR. ADELMAN: The relevance is that I believe that the
11 license agreement that they granted to Ms. Willis was part of
12 the settlement agreement.

13 THE COURT: Well, you can ask that.

14 MR. ADELMAN: All right.

15 Q. That's the question. Was the license agreement part of the
16 settlement agreement?

17 A. No. It's a separate agreement.

18 Q. And what's the -- in return for the license, what's the
19 consideration that Mr. -- that Mrs. Willis, doing business as
20 Harlem West, is granting to Can't Stop?

21 A. We -- we try to make it the same as the license that we had
22 with Sixuvus, so I think it's 5% commission on gross and
23 various other provisions.

24 THE COURT: The question was, in exchange for giving
25 Ms. Willis the license, what did you get in return, if it

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1 wasn't part of the settlement?

2 MR. BESSER: That goes into the settlement agreement,
3 your Honor, which is confidential.

4 THE COURT: Well, the witness testified it wasn't part
5 of the settlement agreement. That's what confused me.

6 A. No. Okay. So, to be clear, there were two agreements:
7 there was a settlement agreement and a license agreement, and
8 they're separate documents, but we signed the license agreement
9 at the same time we settled, so that there's no confusion.

10 Q. Was there any consideration given in the settlement
11 agreement in exchange for the license agreement?

12 A. No.

13 THE COURT: Well, if you had decided not to give the
14 license agreement, would the settlement have gone through?

15 THE WITNESS: I don't believe so.

16 THE COURT: So how is it that you can say that the
17 license agreement wasn't a part of the settlement agreement?

18 If the deal was we'll give you a license agreement and
19 maybe some other stuff as part of the settlement, then it's
20 part of the settlement.

21 If it wasn't part of the settlement and it was just
22 something you did because you woke up on that side of the bed
23 that morning --

24 THE WITNESS: No, no, no. I thought the question was,
25 was it the same agreement.

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J. Belolo - Cross - Adelman

1 THE COURT: No. The question is not were they the
2 same pieces of paper.

3 The question is, did you give Ms. Willis the license
4 agreement as part of your settlement of these lawsuits?

5 THE WITNESS: Of course.

6 MR. ADELMAN: Thank you, your Honor.

7 BY MR. ADELMAN:

8 Q. Okay. Earlier you testified that you had called
9 Ms. Crawford to talk to her about the termination?

10 A. Yes, uh-huh.

11 Q. And what date was that?

12 A. It was -- I think it was the same day I sent the e-mail.

13 Q. So May 30th?

14 A. Yes. Maybe the day before, but I'm pretty sure it was the
15 same day.

16 Q. And the license agreement you entered into May 19th.
17 Does that sound familiar?

18 A. It's possible, yes; consistent.

19 Q. Okay. Eleven days before you called Ms. Crawford?

20 A. I don't recall the exact date, but if you know for a fact,
21 then...

22 Q. Other than the video that we saw -- withdraw that.

23 The video that we just saw that Ms. Willis played, do
24 you know if it was edited in any way?

25 A. The video we just saw?

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J. Belolo - Cross - Adelman

1 Q. Yeah.

2 A. Yeah. It's very edited.

3 Q. And the audio track is not actually the audio track from
4 the concerts, correct?

5 A. I don't know because I didn't edit it, but my
6 professional --

7 Q. That's what I'm looking for.

8 A. -- in my professional assessment is that some of it is in
9 sync in the beginning, and then another track gets overlaid,
10 but part of it are actual -- part of it are in sync with the
11 real -- with the scene that would go with it, and other is
12 overlaid, but it's edited.

13 THE COURT: But you can kind of tell -- even I can
14 kind of tell that the music was continuous in some portions
15 where the video was jumping from --

16 THE WITNESS: Sure. Sure. It was edited. It was
17 overlaid.

18 THE COURT: Okay.

19 Q. I'm almost done here, so I thank you for your patience.

20 In previous testimony, you talked about having agents
21 and others monitor the performances of Sixuvus; correct?

22 A. Not the main attribution, but some of them do; yes.

23 Q. And are they trained to do that?

24 A. Trained to do that? I wouldn't know if they had any
25 training for that.

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J. Belolo - Cross - Adelman

1 Q. Did you train them to monitor Sixxvus?

2 A. I didn't train them.

3 Q. Do you have anybody monitoring Victor Willis and his group?

4 A. Yes.

5 Q. Who?

6 A. Myself, I monitor it, and we've got people in-house at

7 Scorpio and Can't Stop. We've had a few back-ups as well by

8 our sub-publishers in Australia.

9 Q. And you have quality control provisions within your
10 trademark license agreement with Ms. Willis?

11 A. We do.

12 Q. And how are those enforced?

13 A. Well, Ms. Willis sends me reports on a regular basis,
14 mentioning the dates they're booking, sends me pictures and
15 biographies for approval for the performance -- performers, and
16 she sends me a video and press clippings and material like
17 that.

18 Q. Okay. Last thing that just came to me, was the
19 consideration for the license agreement in exchange for you not
20 having to pay the Willises either their attorneys' fees or
21 other monetary damages?

22 MR. BESSER: Object. It's a confidential settlement
23 agreement.

24 THE COURT: I don't really see the relevance of the
25 rest of the terms.

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1 Q. Thank you very much, Mr. Belolo.

2 A. You're welcome.

3 THE COURT: Redirect, Mr. Besser.

4 MR. BESSER: No, your Honor. Nothing further.

5 RECROSS EXAMINATION

6 BY MS. WILLIS:

7 Q. Mr. Belolo, do you recall counsel here ask a question about
8 consideration with respect to the license agreement?

9 A. Yes.

10 Q. For -- what was the consideration for your understanding
11 for Can't Stop's license agreement with the Sixuvus?

12 MR. BESSER: Your Honor, it's a confidential
13 settlement.

14 THE COURT: The question was, what was the
15 consideration for Can't Stop's license agreement with Sixuvus.

16 MR. BESSER: Oh, with Sixuvus. I misheard. I
17 apologize.

18 A. Well, the consideration was the percentage on the gross.

19 Q. Thank you. And so you also said that there was the same
20 percentage, didn't you, 5%?

21 A. Yes.

22 Q. So would that be the same consideration?

23 A. The royalties are the same.

24 MS. WILLIS: Thank you.

25 THE COURT: You may step down, Mr. Belolo.

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1 THE WITNESS: Thank you, your Honor.

2 (Witness excused)

3 THE COURT: Anything else from defendant, Mr. Besser?

4 MR. BESSER: From plaintiff?

5 THE COURT: From plaintiff. Sorry.

6 MR. BESSER: I sometimes feel like a defendant.

7 THE COURT: Well, for this proceeding, you sort of
8 are.

9 MR. BESSER: Nothing further, your Honor.

10 THE COURT: Ms. Willis.

11 MS. WILLIS: Nothing further, your Honor.

12 THE COURT: Everybody rests. Rebuttal case?

13 MS. MATZ: Subject to just being able to send the
14 additional documents from the USPTO.

15 THE COURT: All right. And I think Ms. Willis owes a
16 document and maybe Mr. Besser owes a document. There were a
17 couple of things today, but the transcript will reveal what
18 they were.

19 Ms. Willis owes a paper document and a disk.

20 MS. MATZ: That's Exhibits 22 and 25.

21 THE COURT: 22 and 25. I can't remember --

22 MR. BESSER: We're going to do pictures of the bus.

23 THE COURT: You're going to do pictures of the bus;
24 that's right. All right.

25 Well, I'm glad we're finished, although I'm not glad

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1 that I cleared tomorrow morning, but these things happen.

2 Proposed findings of fact and conclusions of law are
3 next. When I thought we were going to finish Wednesday, I was
4 going to give you 'til Monday. What I propose is to give you
5 until Monday, but get me whatever you're going to get me in the
6 morning on Monday.

7 MS. MATZ: That would be fine. We won't get the
8 transcript until tomorrow, so I appreciate that.

9 THE COURT: Anything else we should do?

10 What I hope to do is get to work on this right away
11 when I get your proposed findings.

12 If I reach a decision, but I think it's going to be a
13 while before I can get you my reasoning, I may just issue a
14 sentence saying what the decision is and reasoning to follow,
15 but if I can get the reasoning fairly close to the decision,
16 I'll do it both at once.

17 And we'll be making a priority of this matter.

18 MR. LEVY: On the proposed findings of fact and
19 conclusions of law, your individual rules have rules for briefs
20 on motions. I assume those don't apply to proposed findings of
21 fact and conclusions of law.

22 THE COURT: Oh, you mean in terms of length?

23 MR. LEVY: Length. Or do they?

24 THE COURT: Well, they don't, but I certainly don't
25 want either the findings of fact or conclusions of law to

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1 exceed 25 pages, and I can't imagine that they would have to.

2 So, a finding of fact is not so-and-so testified to
3 this so-and-so testified to that. A finding of fact is the
4 fact you want me to find and then the places in the record
5 where you think I should look to find it.

6 If the finding of fact that you want me to make is
7 that there was never a written agreement between plaintiff and
8 defendant, for example, the finding of fact would not be
9 so-and-so testified to this and so-and-so testified to that.
10 The finding of fact would be there was never a written
11 agreement, and then you're going to put in parenthesis all the
12 places in the record where you think I would find support for
13 that finding of fact.

14 So I can't imagine why anybody's findings of fact or
15 conclusions of law would exceed 25 pages.

16 MR. LEVY: Do you want a table of authorities?

17 THE COURT: That would be helpful.

18 MS. MATZ: If I can just ask, when you say that the
19 either/or wouldn't exceed -- are you expecting them to be two
20 separate documents with a 25-page limit each?

21 THE COURT: It can be one document, but neither half
22 should exceed 25 pages.

23 MS. MATZ: Understood.

24 THE COURT: Ideally, the whole thing wouldn't exceed
25 25 pages, but that's probably too much to ask.

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1 Please don't infer from the fact that I'm giving you
2 up to 25 that it should be that long. It seems to me it could
3 be a lot shorter.

4 MS. WILLIS: You had asked for an update on the Second
5 Circuit this morning. And so there was -- I don't know if you
6 saw it -- there's an order which came down a couple of hours
7 ago. They're requesting oral argument on the stay.

8 THE COURT: When?

9 MS. WILLIS: On the stay, on the request for the stay
10 for the order is scheduled.

11 THE COURT: They don't usually communicate with me
12 except to tell me the bottom line, whether I was right or
13 wrong.

14 When is the oral argument?

15 MS. MATZ: The oral argument is on the 20th. To
16 clarify, earlier Mrs. Willis said it had been referred to the
17 panel, which it has, but in the meantime, just so the Court
18 knows, and I think they did send this decision to you, but they
19 denied the original request for the emergency stay. They did
20 refer it to the panel. And the oral argument was scheduled for
21 February 20, I believe.

22 THE COURT: That is all news to me. I didn't know --

23 MS. WILLIS: Actually --

24 THE COURT: -- that they had done anything.

25 MS. WILLIS: -- they denied the temporary stay in the

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1 interim in lieu of it being transferred to the panel in which
2 it is now to actually consider the stay.

3 THE COURT: Well, I'm sure if they were telling me
4 that I had to -- if they were taking action that required me to
5 do something, I would have heard about it, and I haven't heard
6 about it.

7 When they punt something to the panel, they're doing
8 nothing essentially and leaving it to the panel, so we'll see
9 what they do. And I'm sure if they issue something that either
10 requires me to do something or shows me I'm wrong about
11 something I've already done, they'll let me know.

12 And if something happens that I should know about and
13 you don't see it hitting the docket here and you want to tell
14 me about it, that would be good. All right. Thank you, all.
15 And needless to say, if you work anything out between now and
16 Monday, let me know.

17 MS. MATZ: One last housekeeping thing, and that is,
18 we noticed in preparing for this and in a couple of other
19 things the motion that Mrs. Willis' attorney filed on, I
20 believe it was December 8 and apologize if I have the date
21 wrong, but when they intervened in the case, I'm pretty sure it
22 was December 8, the papers never actually got uploaded to the
23 docket.

24 I know usually after the Court issues the order, then
25 the papers in support of that get uploaded. That never

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1 actually happened. Just before we get too far out so that for
2 completeness of the record, could those be uploaded by either
3 the Court or Mrs. Willis?

4 THE COURT: Let me take a look at the docket so I'm
5 sure I know what you're talking about. Hold on one sec. Let's
6 see. December 8 is when you made your motion.

7 MS. MATZ: We actually made ours on November 30, which
8 is when we physically walked the papers in. We uploaded them
9 on the eighth. We realized they hadn't been uploaded, and
10 that's when we did it.

11 THE COURT: Okay. The first thing I have from -- the
12 first thing that appears on the docket from Intervenor looks
13 like a December 15 letter.

14 MR. LEVY: December 8, what happened -- that's when we
15 had the second meeting before the Court. We had one on
16 November 30. And then, I'm looking at the transcript here, on
17 December 8, they had brought their papers in. Mr. Caplan had
18 it approached. The clerk's office brought it up here. And
19 then I think you took everybody in to argue it, and the
20 transcript --

21 THE COURT: Then we screwed up on my end -- oh, wait.
22 What I have on the docket happened on December 15 was --

23 MR. LEVY: That's the third time we were here, your
24 Honor.

25 THE COURT: You're interrupting me, Mr. Levy, and it's

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1 not going to come out on the transcript if we talk over each
2 other.

3 I have a minute entry for December 15, which just says
4 no contempt sanctions at this time, but strict compliance with
5 the Court's order is expected.

6 You're telling me -- and I believe you -- that counsel
7 for Ms. Willis had filed papers before that. It looks like he
8 filed a notice of appearance -- they both filed a notice of
9 appearance on December 12.

10 MS. MATZ: Yes. He walked the papers in on December 8
11 and Mr. Levy is correct. That's the day we had a hearing where
12 Mr. Caplan, who at the time represented Mrs. Willis, was
13 present. He handed out copies of the paper, but they never
14 actually made it to the electronic docket.

15 THE COURT: Let me just see if I have that.

16 MR. LEVY: Would it help if you saw the transcript
17 from the eighth?

18 THE COURT: I believe you. I'm just looking to see
19 what I have.

20 I have a December 15 letter with attachments from
21 Mr. Carita (ph), but that's not what you're talking about. I
22 have proposed order to show cause; a proposed counterclaim; a
23 declaration of Mr. Michaels; a declaration of Mr. Caplan; a
24 declaration of Ms. Willis; and a memorandum of law.

25 That's what you're referring to.

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1 MS. MATZ: I believe. I'm not sure the declaration of
2 Mr. Michaels is a part of it. Off the top of my head, I don't
3 remember. But I do believe all the papers are actually listed
4 in the TRO that the Court signed on December 14. I believe it
5 listed all of our original papers and all of Intervenor's
6 papers in the wherefore clauses before it went into the order.

7 THE COURT: I don't have electronic copies of those
8 papers, but they should be filed.

9 Do you, Ms. Matz, have electronic copies of those
10 papers?

11 MS. MATZ: Part of the reason I'm asking that maybe
12 Ms. Willis file them is because mine has my handwriting all
13 over them. They were hand-filled right before the hearing.

14 THE COURT: But you have paper copies. I'm asking if
15 you have electronic copies.

16 MS. MATZ: Oh, I don't have electronic copies. No.
17 Only hard copies.

18 THE COURT: Does anybody have electronic copies
19 besides former counsel for Ms. Willis?

20 MR. LEVY: We don't, your Honor. No.

21 THE COURT: Ms. Willis, you're going to have to get in
22 touch with your prior counsel and either ask them to
23 electronically file those documents or send electronic copies
24 to you so that you can electronically file them --

25 MS. WILLIS: I have them.

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1 THE COURT: -- so the record is complete.

2 MS. WILLIS: I have them already. Would you like me
3 to upload them?

4 THE COURT: Yes.

5 MS. WILLIS: It will appear as a later docket number;
6 is that okay?

7 THE COURT: They're dated -- it looks like they're
8 dated December 7. And yes, they'll show up on the docket as if
9 they were -- actually, probably the clearest thing to do would
10 be, is if you could put a cover letter on them, date it today,
11 and say attached pursuant to the Court's order are copies of
12 documents provided to the Court and counsel for plaintiff and
13 defendant on December 8.

14 MS. WILLIS: In that case, do you want me just to send
15 it to chambers on the e-mail and you'll --

16 THE COURT: Attach them to a letter and just upload
17 it. This way, the record will be clear that everybody had
18 these documents on December 8 and it's not a new application.

19 MS. WILLIS: I shall do that.

20 THE COURT: Thank you very much.

21 MS. MATZ: Thank you, your Honor.

22 MR. LEVY: Thank you.

23 THE COURT: All right. Thank you, all.

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